

FRANKFORD TOWNSHIP LAND USE BOARD
APRIL 16, 2008 – 6:00 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. Shelton, Mr. Larson, Mr. Romania, Mr. Dolan, and Mr. Nadolny. Also present were Mr. Clark, the board attorney, Ms. Leo, Mr. Clark's Assistance and Mr. Pellow, the board engineer.

Those absent were: Mrs. Albanese (excused)

BOARD BUSINESS

Agriculture Commercial District/Route 206 C1/C2 Zoning Ordinance:

Mr. Ayers stepped down from this matter.

Mr. Romania indicated that he did an analysis of the Master Plan as well as the Re-examination Report and the proposed Ordinance. He indicated that there are certain things in the Master Plan that we were looking at when we were setting up the current zoning, one of which is that we have the density of one house per 2 acres. However, now it is one house per 5 acres, which only improves things. He referred to the area on Route 565 which was just north of Northrup Road that we were going to change to the LI Zone, it is currently C2. The reason for doing this is there are 2 aspects of our town center; there is the inner core and the outer core. He indicated that we need to make sure that the outer core is feeding our inner core. He feels that this Ordinance has changed that, it is no longer LI; it has been changed to a new zone which is the AC Zone. Now there is a whole area of LI that is no longer there that we were looking at to feed the town center.

Mr. Romania also reviewed what is being proposed as allowed uses in these zones and what currently exists. He indicated that the new zone, the AC Zone, is looking at 3 acres vs. what currently exists of 40,000 square feet as a minimum size. He indicated that there were some specific uses that we had in the C1 Zone along Route 565 to feed into the outer core and the inner core of the town center which are no longer there. One of which is indoor retail sales, restaurants, services and business which is in the Master Plan. These uses are no longer in the AC Zone. He indicated that there are several different things that are inconsistent.

Mr. Romania indicated that there is another area on Route 206 where the zoning is obviously still the same, but there were some areas in our Master Plan that we are having as allowable uses which now will not be allowed, such as automotive repair stations, repair garages and similar uses, as well as car washes.

Mr. Romania indicated that in the C2 Zone there were some areas that we specifically called on as required in the Master Plan that we were going to add that are not there either, such as automotive repair stations, repair garages, box stores, car washes. He feels if the board does not want these uses, this needs to be discussed.

Mr. Romania indicated that there were items in the Master Plan that were discussed to eliminate in the C2 Zone, that are not in this proposed Ordinance.

BOARD BUSINESS CONT.

Agriculture Commercial District/Route 206 C1/C2 Zoning Ordinance Cont.:

Mr. Romania indicated that this Ordinance should have been written with a Planner involved to insure that what we are doing reflects our Master Plan. He understands that that there are things that need to be passed as soon as possible. He suggested that these items could be areas that show up as prohibited uses in the current zone and in the long term the board looks at actually modifying this ordinance to be more in conjunction with our Master Plan. He also feels that that the board needs to look at some compensation plan for those zones that are being modified and changed.

Mr. Sutphen questioned the inconsistencies that Mr. Romania reviewed if they were with the new ordinance or with the current ordinances. Mr. Romania indicated that there are inconsistencies with both. Mr. Sutphen indicated that the Land Use Board reviewed and approved a draft ordinance along Route 565 back in April, 2006. He further indicated that when they drafted this ordinance they were keeping the commercial in this area in accordance with the principals of the Master Plan and to try and effectuate the purpose of the Master Plan and they were trying to keep in somewhat a low use, low intensity agricultural related use. Mr. Gstattenbauer indicated that the AC Zone Ordinance was discussed before the Land Use Board which did not include the LI Zone. He further indicated that it started on the west side of Armstrong Road down to the railroad tracks on the west side. On the east side it went from Route 206 down to the Wantage line. He further indicated that the board decided that they were not going to adopt this ordinance at this point in time; they wanted to wait until the township obtains Plan Endorsement, because the board felt that they did not want to give up this zone in case the township did not obtain Plan Endorsement. Mr. McDowell indicated that this did not work, and he feels that the township has to go to the State with the ordinances passed before applying for Plan Endorsement. Mr. Gstattenbauer and Mr. Romania indicated that this is inconsistent with what the State told the subcommittee at the Pre-Petition meeting in October, 2007. Mr. Clark indicated that you can argue that this proposed Ordinance is consistent with the Master Plan by eliminating strip malls and taking away the commercial on Route 206, it did not get into the specific uses. Mr. McDowell indicated that 3 years ago the Re-examination report of 2005 stated that Route 206 and Route 565 were inconsistent with the Master Plan. He further indicated that this ordinance proposed will accomplish what the Re-examination report of 2005 stated. He stated that the board must make a decision this evening if this ordinance was consistent or not consistent with the Master Plan. He feels it is certainly consistent with the intent of the people of this township about keeping the township rural. They have modified the ordinance to reflect some of what they have heard from the public. He indicated that they have included some uses in the ordinance that were not in the original draft in order to make the area more attractive and more useful. He stated that on Route 206, they did not change the zoning at all, but added some uses that they did not want. The opinion was at the time that this was consistent with the Master Plan. Mr. Gstattenbauer indicated that what the board voted on at the prior meeting with regard to the Route 565 portion was not changed in accordance with the board's recommendation. He indicated that the area was extended from Northrup Road and Linn Smith Road. Mr. Sutphen indicated that the Township Committee accepted most of the recommendations from the board. Mr. Gstattenbauer indicated that the extension of the AC Zone was not included on the original draft by the Land Use Board because at the time they were allowing for a possible expansion of the town center in case the state wanted to make it bigger and the second reason was for a potential TDR application to put a buffer in between the town center. Mr. Sutphen indicated that the draft Ordinance in 2006 never listed any boundaries; it stated the Route 565 corridor was what was inconsistent. They did add this property in after the board reviewed the ordinance last month and the reason for this was if they did not make this change, they would be spot zoning Mr. Castimore's property if they left it in the C2 Zone, which would be inconsistent with the Master Plan. Mr. Shelton questioned as to

BOARD BUSINESS CONT.

Agriculture Commercial District/Route 206 C1/C2 Zoning Ordinance Cont.:

what are the allowed uses in the LI Zone. Mr. Pellow indicated in the Master Plan it states as allowed uses for the LI Zone as: offices, scientific or research labs, indoor commercial recreation, wholesaling, warehousing, storage of goods, accessory retail uses of the principal use, public uses, agriculture and light industrial uses. Mr. Shelton indicated that the LI Zone would provide for more high paying jobs than a retail zone would, which he feels this should be in the town center zone. Mrs. Fountain indicated that the issue seems to be the road frontage on Route 565 and she questioned the board if the LI that was taken out should it be put back in. Mr. Sutphen indicated that he feels the problem also is the land owner who is in the C2 Zone does not want his property changed to the AC Zone. Mr. Pellow indicated in his review of the maps in the 2000 Master Plan he does not feel this ordinance is consistent with the Master Plan. He indicated that the committee wants to change the zone to AC; it does not mention the AC Zone on Route 565 or Ross' Corner. He referred to the Future Land Use Plan and the Future Town Center Plan in the 2000 Master Plan which goes from Ross Corner to Fetzer Lane on Route 565 and is zoned C2; from Fetzer Lane to Skyland Drive on the east side of Route 565 is LI; and from Fetzer Lane to Linn Smith Road on the west side of Route 565 is all LI; from Linn Smith Road to the Wantage Township line is AR. Therefore, this ordinance is inconsistent with the Master Plan and he reviewed this as a professional planner. Mr. Sutphen indicated that the wording of the master plan states to avoid strip type development along the highways. He agrees that AR does this, but he does not feel that AR may not be in the best interest of the use of the land being discussed. Mr. Clark indicated that one of his recommendations was to have the Planners who prepared these plans review it for some consistency with the Master Plan and the Re-examination reports. Mr. Romania feels the AC zone is far too exclusive and it will not feed the Town Center. Mr. Sutphen indicated that since the recommendation of the Land Use Board, the township committee has added into the AC Zone: Public buildings and public uses; office, professional offices; bed and breakfast; and restaurants. He feels that this ordinance will encourage development to go to the center. Mr. Larson was concerned with making strip malls as a prohibited use and named a few developments in the town such as the Trico building, which is a strip mall, and he feels that this is an attractive building. He feels that if the board allows attractive development along Route 206, they will be able to thrive. He also does not feel that a single business along Route 206 will survive. Mr. Dolan was concerned with the compensation that would be given to the land owners as mentioned by Mr. Romania. Mr. Romania indicated that this would be done through TDR and a planner would have to review this area.

Mr. Romania suggested to the board to add some prohibited uses to the existing zoning at this time and let a planner review the ordinance and then come up with an ordinance that the board is sure complies with the Master Plan, complies with our growth and were we want to go and what the state wants. Mr. Clark stated that prohibited uses would be: automotive service stations, repair garages and similar uses, drive-in and drive through restaurants and facilities, restaurants without wait staff, box stores, junk yards, automobile dealerships and carwashes. Mr. Romania also stated that processing plants should be included under prohibited uses. Mr. Gstattenbauer was concerned about the restaurants without wait staff and he would like a better definition of Strip Malls.

A Motion was made by Mr. Shelton and seconded by Mrs. Fountain to take the current zoning that the township committee has presented this evening and add additional uses.

YES: 4 McDowell, Fountain, Sutphen, Shelton
NO: 5 Bennett, Gstattenbauer, Larson, Romania, Dolan
ABSTAIN: 0

The Motion was denied.

BOARD BUSINESS CONT.

Agriculture Commercial District/Route 206 C1/C2 Zoning Ordinance Cont.:

A Motion was made by Mr. Gstattenbauer and seconded by Mr. Dolan to keep the current zoning and add Prohibited Uses. Roll Call:

YES: 5 Bennett, Gstattenbauer, Larson, Romania, Dolan

NO: 4 McDowell, Fountain, Sutphen, Shelton

ABSTAIN: 0

The Motion was carried.

A Motion was made by Mr. Gstattenbauer and seconded by Mr. Dolan to add as prohibited uses to the current zones: strip malls, automotive service stations, repair garages and similar uses, drive-in and drive-thru restaurants and facilities, restaurants without wait staff, box stores, junk yards, automobile dealerships, carwashes and processing plants; and also to add the definition of a strip mall by Harvey S. Moskowitz which states: Commercial or retail uses, usually one-story high and one-store deep, that front on a major street. Roll Call:

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

NO: 1 Sutphen

ABSTAIN: 1 McDowell

The Motion was carried.

A Motion was made by Mr. Fountain and seconded by Mr. Shelton to take a 5 minute recess at 7:30 p.m. All were in favor. The Motion was carried.

Mr. Ayers returned to the meeting.

A Motion was made by Mr. McDowell and seconded by Mr. Sutphen to reconvene the meeting at 7:45 p.m. All were in favor. The Motion was carried.

Small Wind Energy Systems Ordinance/Green Ordinance:

Mr. Romania appointed Mrs. Albanese, Mr. Ayers and Mr. Gstattenbauer to the Green Ordinance Committee which will include the Small Wind Energy Systems and any other alternative energy sources.

Correspondence:

The Correspondence was reviewed. No Formal Action was taken.

PUBLIC PARTICIPATION

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

Barbara Kelly appeared before the board and agreed with Mr. Romania about having a Planner review the current proposed ordinance. She was troubled about leaving Route 565 as commercial zoning because there is the statement in the Master Plan Re-

PUBLIC PARTICIPATION CONT.

Barbara Kelly cont. - examination report to specifically eliminate commercial zoning and specifically on Route 565. She feels that this needs to be done to obtain Plan Endorsement.

Jim Kenny appeared before the board and questioned the board as to the benefits of a Town Center. Mr. McDowell indicated that the benefit of Plan Endorsement is to facilitate development on Ross Corner (Water Processing Plant & Sewage Treatment Plant). He further indicated that there will be further assistance from the state if Plan Endorsement is approved.

Sam Castimore appeared before the board and was concerned with the addition of a bed & breakfast to the zoning because it will need an Njpdcs permit. He indicated he would like to see Mr. Sutphen take his name off the No Mall website. He was concerned that there are meetings at the Office of Smart Growth with members of the town without the township public and developers knowing about it. He stated that he spoke to the Office of Smart Growth and they are concerned about strip malls, one right after another. However, based on the DEP regulations and the amount of land left on Route 206, he does not feel there will a lot of development in these areas being discussed in this ordinance this evening.

Richard Wingle appeared before the board with a concern that the township committee would not answer any of the public's comments with regard to the ordinance discussed this evening.

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

APPLICATIONS CARRIED FROM A 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” & “D” Variance:

Mr. Shelton, Mr. McDowell and Mr. Sutphen stepped down from this application.

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

Mr. Ayers indicated that he had an opportunity to visit the site and speak with the applicant. He feels that the major issue with this application is the definition of storage and display. He referred to the site plan map and where there is display being used now for new and used boats which is referred to as storage. He feels this is the major issue before the board. He feels this area should be looked at and defined what is display versus what is storage. Based on his on site inspection, as you look at the lot from Route 206 there is one level with railroad ties which was previously discussed for the outboards and the small ski boats. Then there is a second level two or three feet above the graveled area that we reviewed possibly doing inboards (the bigger boats). Back from this area there is a section to the north where he wants to do some pontoon display. He feels that in front of the building, this would be a display area. He continued behind the fence to the north side of the building which is referred to on the map as portable boats, storage rack and gravel storage area which keeps referring to the storage area. However, currently it is a display area for new and used boats. When he was on the site there was one boat that was “blue wrapped” which means it is there for storage. The

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

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“white or clear wrapped” boats means it is there for sale, whether it be new or used. Therefore, if you look at this area from the fence to the propane tank which is back by the loading zone, this is really being used for display for new and used boats. Therefore, if this area was made for display, eliminate it for the boats that are going to be kept there other than being for sale. Then, there is the rack storage which include 18 racks with approximately 3 high which could be 4 high if there are small boats stored. This would store approximately 54 to 60 boats. The display area would allow 40 to 50 boats. He feels that instead of the board deciding how many boats the applicant could store, he feels it is better to show on the map to show the area for display (new & used) and what is storage. Then the applicant can fit whatever he can fit. He feels what the applicant had on the lot last winter (which was 50 to 60 boats all blue wrapped all over the lot), created a hazard for emergency vehicles. With the boats stored on the racks, this will eliminate this problem.

Mr. Ayers summarized that the board should discuss that the only thing allowed on the gravel area would be boats that are being brought in for servicing. This would be the only thing that would be allowed on the ground. Everything else would be stored on the racks and whatever he can get in the existing buildings. He feels that limiting the display and limiting the storage area is what the board needs to decide to resolve this matter. Mr. Cecchini agreed with Mr. Ayer’s summary.

Mr. Bryce indicated that there is no objection as to display or even the amount of display. However, the complaint that his client has is the amount of outdoor storage of boats, not boats on display for sale (new & used). He further stated that they don’t know what was stored outside and what was permitted to be stored outside back when the first site plan approval was given. He indicated that it has been his argument and position that during that time we did not see any kind of evidence that outdoor storage was permitted. The prior application, itself, was for the indoor storage buildings to be constructed to hold and contain about 100 boats. This was clear from the applicant’s plan and Resolution that was approved. Therefore, when you get to something aside from outdoor display of boats and to the storage of boats (now in racks) his client does have an issue with this. The way that he is looking at this is right now it is not a conforming use to the zone. And even if there was outdoor storage, 54 boats in racks, is an expansion of storage. He indicated that it has always been his position, while it has never been the display issue for the sale of boats because that is part of the Off Shore Marine business which has been historically there, the actual storage of boats outdoors, in excess of the 100 boats indoor storage that they were granted, was never permitted and is now a nonconforming use.

Mr. Ayers indicated that when the board looked at the 1984 Resolution it shows a gravel area on the site plan and the board decided that this area was for boats to be used on. Mr. Bryce indicated that this was the vote at the last meeting and as an objector to this application objected to this vote based upon the proofs that were presented at the time. He questioned the board, if this was made non-conforming and it was permitted, what was the amount of boats that were being stored there, there was no specificity as to that. Mr. Ayers indicated that in this discussion, back in 1984 the average size of the boat was maybe 12 to 14 feet, currently that number is more like 20 to 22 feet. He feels the board looked at it as we shouldn’t limit it to the number of boats, we should basically limit the area as what should be storage and what should not be storage. Therefore, as the boat grows bigger, the number will be limited. Mr. Bryce indicated that if you look at the area that is being proposed by the applicant this evening compared to the area in the 1984 that was approved, this is an expansion.

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

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Ms. Tubman indicated at the previous meeting she presented a witness, Mr. Daryl Haggerty, the previous applicant in 1984, who left after the board voted last month to find that this was a pre-existing non-conforming use. She further stated that the second vote that you found that the 1984 application included storage and repair on the gravel area only. Mr. Haggerty was not here for the second vote. She had Mr. Haggerty return to this meeting to explain the use of the lot in 1984 when he was here as an applicant, and to describe how and where boats were stored, and then to describe the construction process after the Resolution was adopted in 1984. Mr. Bryce objected to the new testimony of Mr. Haggerty, because he feels he was here the full length of the prior meeting and he could have testified then. He feels this is just an attempt by the applicant's attorney to reconcile a record to try and expand what the board already determined to be the limits as was received from the testimony of Mr. Haggerty. The board indicated that they would like to hear Mr. Haggerty's testimony.

Mr. Haggerty described to the board the use of the lot in 1984. He indicated that they had put in a fence. The storage and display was during the day time in front of the fence and in the evening they were brought back in and the fence was locked. He further stated that behind the fence they had almost every square inch of level ground used for trailers, boats for repair, boats for storage, and boats for display. He indicated that the building inspector at the time of his application was there often and there never was any objection to the site by him or anyone. Ms. Tubman questioned Mr. Haggerty if the variance he obtained in 1984 was for the height of the new buildings. Mr. Haggerty agreed. She further questioned if these buildings were to allow him to have additional storage. Mr. Haggerty agreed. Ms. Tubman indicated that once he obtained his approval, he began to put the buildings up and re-grade the property. She questioned Mr. Haggerty if there were field changes. Mr. Haggerty indicated that there were no field changes made intentionally.

Mr. Bryce questioned Mr. Haggerty as to after the 1984 site plan, how long did he own the business. Mr. Haggerty indicated he was there through the end of 1985 when he sold the business to Mr. Cecchini. Mr. Bryce questioned Mr. Haggerty if a variance was required in the 1984 application for the outdoor display of boats. Mr. Haggerty indicated that the only variance was for the display of boats in front of the building. Mr. Bryce questioned Mr. Haggerty as to how many boats at the time did he want to store on the property. Mr. Haggerty indicated that he does not remember. Mr. Bryce questioned him as to the primary purpose of the new buildings on the property approved in 1984. Mr. Haggerty indicated that it was necessary to be a viable marina to have indoor storage as well as outdoor storage.

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

Mrs. Fountain indicated that on the plans it states that there will be slates in the chain link fence. She feels this will look like a junk yard. She feels it would be much more attractive if there was more landscaping. Mr. Cecchini agreed.

Ms. Tubman questioned Mr. Cecchini if the graveled area was to be used for repair and service of boats. Mr. Cecchini agreed.

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Mr. Ayers questioned the applicant if there is an area where they can designate an area for boats to be serviced. Mr. Cecchini indicated that the more designations the board gives, the more policing the township will have to deal with. He indicated that for 25 years he has used 100% of this property. He has no problem with using the racks for the winter boats, the display area is fine, but designating certain areas for servicing may cause more policing for the township. Mr. Romania indicated that he was more concerned with the designation of the area for display and the storage racks. He does not feel the board needs to be that strict on the servicing area. Mrs. Fountain indicated that she was concerned with boats all over the yard would create an emergency vehicle hazard. Mr. Romania indicated that he felt the applicant agreed that there would be access to the buildings for emergency vehicles at all times. Mr. Cecchini agreed.

Mrs. Fountain indicated that there was an issue discussed about contacting the DEP about installing the storage racks and if it was an expansion, which Mr. Pellow and the applicant's engineer testified that this was not and the DEP had no jurisdiction. However, the objector had a witness that said the DEP should be contacted. She questioned the applicant if he would be willing to apply for a determination letter from the DEP or have his professional submit a letter that it was not necessary so there is something on record. Mrs. Tubman indicated that she would agree to have their expert give the board a wetlands evaluation. Mr. Bryce indicated that he feels that a stream encroachment determination would be appropriate. He would like to point out that the limits of disturbance have changed since 1984 and this should be part of the application to NJDEP, that there was a change to the graveled area and impervious coverage on the site from 1984. Ms. Tubman indicated under the Freshwater Wetlands Protection Act, and there are no wetlands on this property, the wetlands transition areas did not become effective until July 1, 1989 4 years after the completion of construction. She indicated the applicant will agree to give the board the limits; they would not have been subject to transition areas. She further indicated that as far as stream encroachment goes, up until November 1 of this year, it was a 25 foot stream buffer adjacent to the top of bank of the nearest stream. She asked that Mr. Phil testify that the applicant is more than 25 feet from the top of the bank to the nearest stream. Ms. Tubman further stated that her objection is to asking the applicant to put in an expensive and time consuming application to DEP, when they can evaluate physical conditions. Mr. Bryce indicated that there was testimony from an environmental expert that did testify as to presence of wetlands. He would also suggest that the wetlands are a different issue than the stream encroachment. He feels that the area that was approved has been changed, not necessarily lawfully. He feels that the DEP approval should be a condition of approval.

Appearing before the board was Mr. Phil, the applicant's planner, with planning testimony for the pre-existing non-conforming use by the addition of the racks. Mr. Phil indicated that before the board there are 2 "D2" variances, the racks, which is an expansion and the expansion of the front yard display. He indicated that he previously gave lengthy testimony with regard to the C2 Variances, which is almost identical. However, at that time he did not talk about the negative criteria to the surrounding properties. He indicated with regards to the positive criteria there is a necessity with regards to establishing special reasons. There are with regards to case law 3 different categories of this. The third category where the use would serve the general welfare because the proposed site is particularly suitable for the proposed use is the establishment for which he will be providing proofs on. With regards to the special reasons the application must carry out at least one purpose of zoning. The Municipal Land Use Law identified as "B" to secure safety from fire, flood, panic and other natural and man made disasters. He indicated that through prior testimony, the boat racks are intended to provide better organization of the yard promoting easier access to each boat. He referred

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to item “C” of the Municipal Land Use Law which is to provide adequate air and open space. With regards to this, the proposed storage racks are set back off of the property line consistent with the requirements of the zoning ordinance for accessory structures. The storage racks are an open type structure that do not contribute to any type of noise or air pollution. The storage is a dormant use that will not adversely impact any of the surrounding property owners. With regards to the third purpose is to promote a desirable visual environment through creative development techniques and good civic design and arrangements. He indicated the front yard area will be screened to eliminate the appearance of congestion. The owner acknowledges the sensitivity of the community and will maintain an organized and neat arrangement of the display area as well as the boats that are on the property for service. The proposed storage racks will provide a much visual appearance of the property by establishing an organized pattern across the property. The proposed improvements include substantial screening of the property utilizing fence slats, which will be eliminated at the request of the board and replace with landscaping improvements along the fenced area to further enhance the aesthetics of the property. Further landscaping is proposed along the front of the southern side property line to assist in screening the existing improvements on the rescue building, since that building is only offset their property line by 8’ and they don’t have room to put any significant landscaping in there. With regards to the burden to show special reasons, the explanation as given provides the board the jurisdiction to grant relief under the “D” Variance.

Mr. Phil reviewed the negative criteria with the board of this application. There are two aspects of the negative criteria: The variance can be granted without substantial detriment to the public and that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinances. With regard to the surrounding properties, the property to the north is vacant. There was substantial testimony that the property is hindered environmentally sensitive lands, it is not developed to date. There is also a 20’ wide drainage easement along that side property line providing an additional buffer to this property. There exists an additional buffer to the rear on Cook Road, which does not have any access openings cut into it. There is no access openings or any disturbance of any vegetation proposed as part of the subject application. The vacant land across the street is also environmentally sensitive and will result in the same type of buffers as that property located to the north. Just to the south of that property is the DOT property, which also includes outdoor storage, materials and equipment. Located to the south is the property owned by the municipality which is rescue personnel. This proposed property as previously indicated will be screened to assist in the enhancement of the frontage of the property. Further down there are other commercial uses such as the gas station and the hotel. Mr. Phil presented to the board Exhibit “A-8” which is Land Use Map. He indicated that the map shows the residential properties in blue, the vacant properties are green; the commercial properties are in orange. He showed the board the location of the applicant’s property which is all in the same zone as the surrounding property owners. The applicant is not adjacent to any residential properties so there will be no impact of this proposed use on to any residents of the township. With regards to the second and final negative criteria, the first is the implementation of the screening and landscaping. The Master Plan recommendations indicate that vital aspects of the municipal ordinances are to enhance the front of the property. Improvements will significantly screen the majority of the activities of the property along with enhancing the landscaping of the property frontage. The second goal of the master plan is to promote a balance between a residential and commercial growth. The proposed display area on the subject property is a significant aspect of the use to maintain and sustain a viable business. Without the display area and associated recognition of the retail sales aspect of

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the use, the business will not survive. This is also true with the storage of boats since that service was vital to the operation of the business. Efficiently the objectives of the land use element portion of the Master Plan indicate that non-residential land use should be concentrated with access to county or state highways. The proposed use is situated in an ideal location of the township consistent with the objectives of the land use element. Further review of the Master Plan concludes that the objectives of this circulation element require traffic impact from developments be mitigated. The proposed use of outdoor storage will eliminate the constant transport of boats to and from customer's properties. The onsite storage eliminates increased traffic generation on the property including the waste of energy and generation of noise and air pollution. In review of the zoning ordinances of Frankford Township outdoor storage facility has never been in any zone, this would require the property to be possibly located in a better location within the town for which there isn't any. Therefore, it is his determination that this site is specifically suited for this use. The proposed improvements including the slight deviation from the zoning ordinance for the display and outdoor storage racks will not result in any negative impacts to the environmentally sensitive areas of the township and will not result in the clearing or disturbance of any land. Preservation of natural features will be promoted which is a major objective of the zone plan and zoning ordinances of the Township of Frankford. Based on his review of this application and investigation of the zoning ordinances and zone plan, special reasons exists to grant these variances. The granting of these variances will not have any substantial detriment to the zone plan or zoning ordinances, but in fact advances many of the goals and objectives of the master plan. The benefits of the proposed improvements substantially outweigh any detriments to the public good that may be recognized associated with this application.

Mr. Bryce questioned Mr. Phil if he agrees that outdoor storage is not permitted. Mr. Phil agreed. Mr. Bryce questioned if there are several LI Zones to the south of the subject property. Mr. Phil indicated that there are some and some were added under the new revision of the ordinances. Mr. Bryce questioned Mr. Phil if the lot is undersized for the zone. Mr. Phil indicated it is a pre-existing non-conforming lot area. Mr. Bryce questioned Mr. Phil that aside from outdoor storage there are sales and service on this property. Mr. Phil agreed.

Mr. Nadolny questioned the applicant if he had blue shrink wrapped boats stored by the Cook Road section of the property approximately 3 feet away from the creek. Mr. Cecchini indicated that he was not sure how far they are, but yes there are boats right to the perimeter of the property. Mr. Nadolny questioned him if the rack would be further away from the creek than the boats that are currently stored. Mr. Cecchini indicated that they would be approximately 20' from the creek. Mr. Nadolny questioned him if the boats had fuel in them. Mr. Cecchini indicated that they did. Mr. Nadolny indicated that he was concerned with the fuel spilling into the creek. Mr. Cecchini indicated that the boats are used on the water.

A Motion was made by Dolan 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.

Mr. Bryce indicated that he did submit to the board a letter of opinion which he would like included in the record concerning his position. His client does not believe that the applicant has offered the sufficient proof to establish pre-existing non-conforming rights. They believe in the fact that the historical record is in deed contrary to the non-

APPLICATIONS CARRIED FROM A 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” & “D” Variance Cont.:

conforming rights. He is strenuously submitting to the board that sufficient reasons under an expansion of a “D” Variance have not been submitted to grant the expanded use. There is clear evidence that the site has changed. There is clear evidence that were the storage is now being permitted from a geographical stand point was never permitted from the outside, there was never any testimony as to the amount of storage, even when the board has suggested that storage has occurred. The only way you can measure the nonconforming rights, if there were any, was by the amount of boats. There was never any testimony as to how many boats on any areas of the property with any kind of degree of certainty. The applicant is now seeking to expand the area, but also the number of boats being stored. Finally, there was testimony given as to the wetlands and to the stream encroachment. He respectfully requests if the board grants approval for the application at this time, the condition be included that states that the applicant is to set aside all the DEP requirements including letters of determination and letters of interpretations if need be from the wetlands aspect.

A Motion was made by Mr. Ayers and seconded by Mr. Gstattenbauer to approve a “D” Variance for expansion of the display area. Roll Call:

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

NO: 0

ABSTAIN: 0

The Motion was carried.

A Motion was made by Mr. Ayers and seconded by Mr. Larson to approve a “D” Variance for outdoor storage racks. Roll Call:

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

NO: 0

ABSTAIN: 0

The Motion was carried.

A Motion was made by Mr. Gstattenbauer and seconded by Mrs. Fountain to approve the amended site plan which will include: 1) Area in front of the fence would be limited to the display Area as shown on site plan; 2) Gravel area as shown on the site plan to the north side to propane tank for display; 3) North of the building which is shown on the site plan as portable rack and portable boat lift and gravel storage area, this would be a storage area for new and used boats; 4) Existing boat and gravel areas between building to be for boats for service which is 50’ and to maintain a 20’ access strip; 5) Letter from the applicant’s professional for a flood hazard determination and that a flood hazard application was not necessary; 6) Screening of fence area with landscaping and no slats as proposed; 7) Revised maps to be submitted before resolution with details to be attached to resolution. Roll Call:

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

NO: 0

ABSTAIN: 0

The Motion was carried.

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

A Motion was made by Mr. Ayers and seconded by Mrs. Romania to take a 5 minute recess at 9:15 p.m. All were in favor. The Motion was carried.

A Motion was made by Mrs. Fountain and seconded by Mr. Larson to reconvene the meeting at 9:20 p.m. All were in favor. The Motion was carried.

Mr. Shelton, Mr. Sutphen and Mr. McDowell returned to the meeting.

Matthew Sargent – LUB 07-25 – Block 130, Lot 4 – 9 Upper North Shore Drive – “C” Variance:

Mr. Sutphen, Mr. Dolan and Mrs. Ayers stepped down from this application.

Appearing before the board was the applicant, Matthew Sargent, and his father, Gary Sargent. Mr. Matthew Sargent and Mr. Gary Sargent were still under oath from the previous meeting. Also appearing before the board was Kevin Campbell, Esq. representing Thomas Campbell as an objector to this application.

Mr. Romania indicated that the board did walk the property and he saw a little bit of undergrowth on the property, nothing that he saw could not be easily removed or that would be affecting the septic that is currently on the premises. He did note that the road is in disrepair and the board has discussed with the applicant that if anything is approved for this property, there will be improvements done to the road which are necessary. Mr. Nadolny indicated that by improving the road will benefit the neighbors as well as the applicant. Mr. Shelton indicated that the lot seems to be similar to many of the lots in the area with the existing houses. Mr. Larson and Mrs. Fountain agreed with all the board members. Mr. McDowell indicated that the slope of the lot from the road is very steep, then it goes to a gradual slope then it actually flattens out, where the house was staked out. He also indicated that the septic field needs to be maintained, however, it looks good to him.

Mr. Campbell questioned the board if they reviewed the drainage as to how it operates on the properties with regards to the road specifically. Mr. Romania indicated that this was one of the board's concerns because a lot of the drainage is what is washing away the road out onto Upper North Shore. Mr. Campbell indicated that it is his understanding that the applicant is going to change the grade of his property where the proposed house is going to be. Mr. Sargent indicated that where he is proposing the house is fairly level and there will be very little change in grade. Mr. Pellow indicated that he reviewed this issue in his report. He indicated that there is some grading around the house which is shown on the site plan; however, it is not major grading. Mr. Campbell questioned if this would change the water drainage in the area. Mr. Sargent indicated he does feel it would. Mr. Romania indicated that this was a concern of the board and this is why the board has Mr. Pellow review the applications and this issue was reviewed in the report. Mr. Gary Sargent indicated that any grading around the house will be engineered so that the drainage is taken into consideration. He further indicated that they have an engineer who is on retainer to provide all this information when the project is started if approved before this board. Mr. Campbell was concerned that this information was not presented by the applicant this evening.

Mr. Campbell was also concerned that proposed improvements to the road passes through his client's property and there is no easement on record that the road belongs to the township and it remains Mr. Campbell's property. Mr. Clark indicated that this testimony was noted at the last hearing, but the map shows it being in the township right of way. Mr. Pellow indicated that the tax map shows it that way and going back to 1989 when this lot first came before the Zoning Board it also showed it that way. Mr. Clark indicated that this is something that the applicant will have to satisfy and if he does not

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

Matthew Sargent – LUB 07-25 – Block 130, Lot 4 – 9 Upper North Shore Drive – “C” Variance cont.:

have the right to do it then his client has the right to stop him. He further indicated that this is a private issue.

Mr. Campbell questioned if the board is taking any action with regards to the Planning Variance needed in regards to the Pine Cone Road with the uncertain status of the road ownership. Mr. Pellow indicated that it is shown on the township maps as a private unimproved road. Mr. Clark indicated under Section 35/36 of the act this is a variance the board can require improvements.

Mr. Campbell questioned Mr. Shelton that he made a comment that this property resembles the properties in this area, was he referring to the size of the property. Mr. Shelton indicated that he was, plus the pitch and slope of the property as compared to the surrounding properties.

Mr. Campbell questioned the board with regard to space and light did any board member make any observations regarding how the proposed house will affect the space and light of the adjoining neighbors (The shadow that would be cast and the size of the building). Mr. Romania indicated that this house is not impeding the view of any other house in the area, it is not exceeding the height limitation of the ordinance, regarding the space it is in the center of the lot.

Mr. Campbell questioned as to how emergency vehicles would have access this lot assuming that Pine Cone Road will not be improved by the applicant. Mr. Clark indicated from the earlier hearing it was obvious that there were property owners that live beyond this property on this road, therefore, it would be difficult for this board to deny an application for someone that wants to build a house when there are buildings next door that is serviced by the road. He further stated that there was a statement from the surrounding owners at the last meeting that emergency vehicles have come up there. Mr. Pellow indicated that during the 1989 hearing on this lot improvements were sketched out by his office of the improvements to the road and these improvements are being suggested today. Mr. Pellow indicated that the County reviewed this map in 1989 and they also had some recommendations too. Mr. Pellow indicated that his position in 1989 was to move the bank back, realign the road a little bit, and put a guiderail in as you come down the hill. He also recommended that the road be paved with dense graded aggregate and 2” of asphalt. Mr. Campbell questioned as to why the applicant in 1989 never made the improvements. Mr. Pellow indicated that the applicant agreed to make the road improvements, but the board denied the application. The matter went to court, the applicant obtained a septic permit and the court over turned the board’s decision. Mr. Clark referred to the prior resolution which states “Subsequent to a denial of a variance an affirmation of that denial by the Superior Court revised engineering improvements of the road were arrived at and after consultation with the Township Engineer and Township Committee, the Township Committee authorized the execution of an easement over Lot 7A (owned by the Township) to provide for access to Mattison School Road (a/k/a County Route 636) with the proposed improvement of the road. Access to Mattison School Road will be improved to the extent to permit safe utilization of this lot at the same time..... Granting of such variance will not be inimical to the health, safety and general welfare of the community.....Granting of a variance to permit the erection of a single family residence, 28 feet by 40 feet single story ranch house with two bedrooms, one and one-half baths, a full basement and no attached garage on an undersized lot....” Mr. Pellow indicated that this application is for the same size dwelling.

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

Matthew Sargent – LUB 07-25 – Block 130, Lot 4 – 9 Upper North Shore Drive – “C” Variance cont.:

Mr. Campbell indicated to the board that he believes that based upon the fact that this is a county road that is going to be impacted that there has been no substantiation that this road can be improved and based upon that he does not think the applicant is going to be able to meet the criteria of meeting the burden to receive a variance at all.

Appearing before the board was Thomas Campbell, Michael Leonard and Janice Cerra who were still under oath from the previous meeting.

Mr. Campbell indicated that he knows that Mr. Bennett was not at the on site inspection, however, he works for the township and has been plowing the roads for the last 5 years.

Mr. Bennett indicated that he works for Frankford Township DPW and noted that the road is a dirt road and would be a lot better if it was paved and the grade cut down and he feels that it would be better for the neighbors if the applicant upgraded the road, which he has agreed to it. Mr. Clark questioned Mr. Bennett as to the size of the vehicle he uses to plow this road. Mr. Bennett indicated that he uses a mason dump with a 9' plow in front. Mr. Clark questioned Mr. Bennett if it his experience that emergency vehicles could get into this property. Mr. Bennett indicated that a police car and an ambulance could enter this area. However, a fire truck would probably not be able to get to Mrs. Cerra's house because there is not enough turning radius. Mr. Campbell questioned Mr. Bennett if he has difficulty getting up the road to turn around to plow the road. Mr. Bennett agreed. He further questioned Mr. Bennett that Mr. Pellow is suggesting to slightly move the road to create an embankment to increase site line from Route 636, if he was to cut away the bank would it not make the road steeper, would that make it more difficult for him to get his plow up to this area and be able to turn around. Mr. Pellow indicated that it will not be steeper, it will follow the same grade and cutting into the bank in front of Mr. Campbell's lot on the township property. Mr. Campbell questioned as to who will be doing these improvements. Mr. Pellow indicated that the applicant will be making these improvements at his expense up to his driveway and not beyond.

Mr. Kevin Campbell questioned Mr. Pellow when they improve the road will the drainage issue have to be addressed. Mr. Pellow indicated that when they build the road, they can put a swale on the side of the road because there is an inlet at the bottom of the driveway now on the county road. Mr. Pellow indicated that at the present time, the water is running into Mr. Campbell's lot.

Michael Leonard appeared before the board and indicated that the drain Mr. Pellow is referring to goes into a 12" culvert which goes under the road and drains out onto the bank that goes the rest of the way down to his property. He has right now 6" to 8" of water that accumulates where Orchard Street levels out on his property and his adjoining neighbor's property because there has not been appropriate sewer drains put in the top half of Orchard Street. He feels if you cover over that property with a roof of a house and you cover that road with paving, the amount of water that is going to run into that culvert is going to increase. He is very concerned about the drainage issue. Mr. Leonard questioned if the proposed house is the same as the house proposed in 1989. Mr. Sargent indicated it was the same size; however, it is a two story, not a one story.

Mrs. Cerra appeared before the board and indicated that the septic system was put in after 1989 and it is a raised mounded system. She indicated according to the NJ Administrative Code disposable field from disposable field on separate lots require a minimum of 50'. She indicated that the applicant's septic field is not 50' from the outermost portion of his mound. According to the septic design it is 26'. Her septic from the outer limit is 15' which only gives you 45'. She was concerned about the setbacks of

