

**BLAIRSTOWN TOWNSHIP  
LAND USE BOARD  
May 18, 2015**

**MINUTES**

The Blairstown Township Land Use Board met in a regular session on Monday, May 18, 2015, at 7:30 pm at the Blairstown Municipal Building, 106 Route 94, Blairstown, New Jersey. The following members were present: Charles Anderson, Barbara Green, David Keller, Nick Mohr, Paul Avery, Herman Shoemaker, Jim Sikkes, and Debra Waldron. Harold Price, Dominic Daleo, Mark Ohannesian and Richard Mach. Mike Repasky was absent. Also present were: Board Engineer, Ted Rodman, Board Attorney, Roger Thomas, and Board Secretary, Marion Spriggs.

**SALUTE TO THE FLAG:** was recited.

**ROLL CALL:** was taken.

**THE SUNSHINE STATEMENT:** was read.

Meeting was called to order by Chairwoman Waldron, who stated:

“Adequate notice of this meeting of the Blairstown Township Land Use Board has been provided in accordance with the Open Public Meetings Act (Chapter 231.P.L. 1975)”.

**LAND USE BOARD DEADLINE DATES:**

Chairwoman Waldron declared that submission of information supporting applications must arrive at Town Hall **10 calendar days prior to meetings**. She explained this is an effort to give the Board members enough time to review the documents.

**MINUTES OF PREVIOUS MEETINGS:** (As distributed prior to the meeting date).

Minutes of the April 20, 2015 Regular Meeting of the Land Use Board were approved, as written.

**Action:** A motion was duly made by Mr. Keller, seconded by Mr. Mohr to unanimously approve the Minutes of the April 20, 2015 Regular Meeting of the Land Use Board, as written. Debra Waldron abstained.

## **RESOLUTIONS:**

**LB#02-14 NWRHS**, Blk.1402, Lot 21.02, 10 Noe Rd., - **Rezone** request (*rewritten version*)

Chairwoman Waldron said a good way to start discussion of this ongoing application is with listing schools as a Conditional Use in an R-5 zone. She declared that was something that was in place years ago and it disappeared. It is thought that may have occurred as a result of the Town Hall fire in 2000.

She explained in talking to Darlene Green, the LUB Planner, that Mrs. Green indicated having schools as a Conditional Use in an R-5 zone would be her recommendation. She would implement conditions from the School Board and LUB to be put in place to suit the best interest of the Community as a whole. There would be no negative impact to the Community by projects the School may do in the future.

Roger Thomas offered to add to the Draft Resolution, that Mrs. Green believes, had she been aware of the fact that this was not the only school, she would have made recommendations regarding a Conditional Use. He added, that is one of the reasons for the LUB denial to recommend this rezone request to the Township Committee for approval.

Chairwoman Waldron noted she had specifically asked NWRHS, and Mrs. Green, how many schools in NJ were in the School-Zone classification? She also asked, if those changes were done as part of the Master Plan originally, or to consolidate all schools after the fact. She questioned, if made after the fact, what prompted the action?

She mentioned to Mrs. Green there is also an elementary school, to which Mrs. Green responded she was unaware. Dr. Fogelson's recollection was, that information was on public record at the time.

She reviewed that NWRHS came to this Board as recommended by the Township Committee, before whom they initially appeared. At that time she asked them to look at other schools.

Chairwoman Waldron revealed what she was not aware of, was that Mrs. Green's recommendation to the LUB was based on the fact that she was not hearing there were 2 schools. When she became aware of this, Chairwoman Waldron indicated, a school zone would not have been Mrs. Green's recommendation. Mrs. Green felt since there were 2 schools, a Conditional Use in the R-5 zone, would've been more suitable, and would have met both NWRHS and the Township's needs better. Chairwoman Waldron said that is where the confusion occurred.

Attorney Fox argued, that if the envisioned-Conditional Use, does not contain all the data that was already put in the Draft Ordinance, it doesn't really do much at all. He said it is very rare that NWRHS would meet the setbacks, height restrictions, etc. in an R-5 zone, so they would have to come back for a C variance.

Roger Thomas countered that Attorney Fox is prejudging what the Conditional Use would be.

He said all he's heard today, is that there may be a better approach. He hasn't heard that it would limit in any way, NWRHS's ability to proceed in a rational way. He said what he believes the LUB wants is, if NWRHS can no longer meet the terms of the Conditional Use, which will have some degree of flexibility, then that comes to a D-4 variance.

Roger Thomas explained to Elizabeth Waterbury, PP for NWRHS, if there can be an ordinance that meets NWRHS's concerns, generally, and with some flexibility, and they come before this Board, meeting the terms of the Conditional Use, it is not a D variance. He continued, therefore it satisfies NWRHS's concerns about the cost of having to hire a professional Planner.

He said that is why the talk is, of meeting the general concerns of the Board of Education, while retaining that control. Since he heard this from the LUB members, he explained, that was why he included it in the Resolution,

Dr. Fogelson stated his main question, and he thinks basis of this conversation is, what is this Board's concern regarding negative impact to the Community. Roger Thomas explained, for example, unbridled expansion, in a zone in which you seek to make modifications, i. e. certain bulk standards like side-yard setbacks, become variances of a lesser standard. He thinks that may be the concern, whereas if you end up with an Ordinance that NWRHS and the LUB can live with, it is a Conditional Use and seeking to violate those setbacks within the Conditional Use, becomes a D variance. That level of control is a higher burden on NWRHS.

Chairwoman Waldron explained that the Board wants this resolved. She noted the Township is responsible for the school and taxpayers, as well. She commented the Board wants to do what is right for everyone. She pointed out the Board is not trying to negatively impact the school in any way. She revealed she never turned anything down that is an inherently beneficial use. She said she wants the solution to work for the community now, and in the future.

Dr. Fogelson revealed NWRHS school population was 1143 students in 2009, 870 students in 2016, and 700 students estimated in 2022. So the question was asked, What are the possibilities in the area of expansion?

Mayor Shoemaker noted a lot of money has been spent on this application. He commented that Attorney Fox made a suggestion, if all the parameters that Ms. Waterbury & Mrs. Green put together, were incorporated into a Conditional Use, that sounds like a good idea.

Mayor Shoemaker suggested in an effort to move this along, Ms. Waterbury & Mrs. Green get together, and based on their experiences, talk about what would you find in a Conditional Use for a school in an R-5 zone, then let them draw up a list. Chairwoman Waldron responded, that is exactly what should be done, and she had suggested it before. She said these women must have an opportunity to speak, so the Board can hear whether or not it is viable. Taxpayer dollars are being spent, so she wants to be sure everyone is on the same page going forward. She does not want to spend any more time or money. Chairwoman Waldron said if the Mayor is in agreement with that, she will speak with Mrs. Green tomorrow, and if it is ok with the Board, she will authorize her to talk on the Board's behalf. Finally, she commented "let's come up with a solution that works for all of us".

Mayor Shoemaker said “that makes sense”.

Superintendent Fogelson responded “that sounds wonderful to me”. He noted he will be retiring in Florida. He revealed the new superintendent will start on July 1<sup>st</sup>.

Nick Mohr interjected, as a procedural comment, there is physically, no way to do this before the 6/10/15 Township Committee Meeting. Roger Thomas responded it could be done precipitously and have some action taken by this Board at their 6/15/15 Meeting.

Roger Thomas questioned if Dr. Fogelson would be willing to understand that. Dr. Fogelson responded he would have to look at the calendar since he is in the process of making budget presentations and has a finite calendar. He said he is happy to do anything to bring this to resolution.

Roger Thomas said he would contact Mrs. Green to give her the sense of what transpired at this meeting, so hopefully there can be some resolution before 6/15. Therefore this matter will be carried until the 6/15/15 Land Use Bd. meeting.

When Attorney Fox discovered that the 6/10/15 Township Committee meeting precedes the 6/15/15 Land Use Board meeting, he commented “it could happen here at the Land Use Bd. but couldn’t happen at the Twp. Committee level”. Roger Thomas responded “hopefully, that would be a ministerial matter”.

**LB#06-14 Myrtle Donuts, LLC (Dunkin Donuts), Block 903 Lot 2.01 – Minor Site Plan**

Chairwoman Waldron indicated, for-the-record that she will be abstaining from this vote.

Roger Thomas explained that he has received some suggested modifications on the Resolution, and has had discussions with Attorney Williams. He reviewed those changes, as well as other suggestions from LUB Board members. He will provide the revised Resolution after this meeting.

**Action:** A motion was duly made by Mr. Sikkes, seconded by Mrs. Green to approve the Resolution for **LB#06-14 Myrtle Donuts, LLC (Dunkin Donuts)**, Block 903 Lot 2.01 – Minor Site Plan, with modifications. Roll call vote: Anderson, Green, Keller, Mohr, Avery, Shoemaker, Sikkes and Price - yes. Mrs. Waldron abstained.

**LB#01-15 CGP Acquisition & Dev., LLC (Dollar General/Grater LLC), Blk. 904, Lot 8.05 110 Rt. 94 – Prel & Final Major Site Plan + Bulk Var.**

Barbara Green recused herself on this application.

Roger Thomas reviewed suggested modifications to the Resolution he drafted.

Ted Rodman suggested the Resolution should include the filled, underground tank for fire prevention.

**Action:** A motion was duly made by Mr. Sikkes, seconded by Mr. Keller to approve the Resolution for **LB#01-15 CGP Acquisition & Dev., LLC (Dollar General/Grater LLC)**, Blk. 904, Lot 8.05 110 Rt. 94 – Prel & Final Major Site Plan + Bulk Var., with modifications. Roll call vote: Anderson, Keller, Mohr, Avery, Shoemaker, Sikkes and Price. Mrs. Waldron abstained.

**COMPLETENESS:**

None

**PUBLIC HEARING:**

(Former LB#01-12), **LB#06-13 Clark**, Block 801, Lots 1 and 2.01 No road frontage

Darren Occhiuzzo, Fire Chief, Hose Co. #1, Blairstown, NJ was sworn in. He reviewed this application again, with its modifications. He stated he received the 3/31/15 revised plans about 1 week ago and reviewed them on the next day with his crew. He referenced pg. G3 (of 5). He noted the total wheelbase of the ladder truck is 228”, which is a difference of 15 – 20” corresponding with the arc and the geometry of the swing of the truck.

He said the turnaround was satisfactory.

The passing areas were 18’ – 25’ long which is not even the length of the longest truck.

The width requested was 25’ to include a staging area to get closer to the fire. He said the proposed 10’ would barely squeeze a truck through that was not in any type of operation. In the staging process that entire 10’ would be used just by one truck.

In reference to the length of the driveway, manpower would be exhausted by walking the driveway to bring tools etc.

To summarize, he said the main concern was the passing zones.

Roger Thomas noted the turn-around dimension is acceptable, the tree removal proposal is acceptable, but the concern is the walking distance which could exhaust manpower. Also, passing zones proposed are less than the 25’ requested. The length of the ladder truck needs to be modified as noted above on G3 (of 5).

For-the-record, the water supply as previously discussed, is a pond by Mr. Bertholf’s. The Fire Chief pointed out there is no turn around at the end of that road to have an efficient tanker-task force. He explained, the pond could be used, but not accessing it by using a tank task force, or running a hose length.

Chairwoman Waldron explained that the Fire Chief's testimony is so important tonight, as Hose Co. #1 has the largest vehicle for emergency personnel.

Fire Chief Occhuizzo said unless it was a small room & contents fire, manpower would be exhausted almost immediately in trying to set up for 3500' driveway. He noted there is not enough water to fill the hose, which is 2,000', or even the truck with the longest hose bed.

This portion of the Hearing was opened to the public.

Mr. George Piccola, Mt. Kimble Av., Morristown, NJ, who previously did a Title Search, was sworn in.

He further investigated if the Applicant had any private rights to the DeKorte property since the 4/20/15 meeting. His report was dated 4/16/15. After reviewing his findings, he confirmed the Applicant's property does not have any right of access through the DeKorte property, as far as he could find.

There were no additional comments or questions from the Public at this time.

Attorney Schepis, representing the DeKorte neighbors, asked to make a closing comment.

He said the archival investigation demonstrates this applicant does not have legal access through the DeKorte property. He said they are 450 ft. away from the paper street. They did not own the property at the time the right-of-way was vacated. He stated the Applicant's property is not land locked. They have a legal right of access shown on the Tax Map. It meanders through Farm Valley Estates and makes its way to Cobblewood Rd. He declared that the Applicant has not shown to this Board's satisfaction, that he has a legal right of access. He said the Applicant has a vehicle which he can take to accomplish that, by pursuing an action in the Chancery, as did the Adlers.

He speculated the Applicant did not do that because he can't, and prefers going through the DeKorte property without buying an easement, without establishing a court order, because it is the easiest way to access his property.

He noted that the Fire Chief testified, that because of the distance, the house would go up in flames before he could get there. Apart from a kitchen fire, there is nothing that could be done.

As a result, Attorney Schepis presented that the Applicant has failed to satisfy the statutory criteria in Section 36. He stated there are other things that can be done, i.e. installation of underground water tanks. He feels there is no basis to grant the Applicant relief. He explained the Applicant has an avenue of redress he can pursue in the courts and then come back to the Board with a Plan that satisfies the statutory criteria.

Attorney Schepis pointed out that the Applicant has not shown that he has a reasonable right of action. He prefers to gain access through his clients', the DeKorte's, property without buying an

easement or establishing a court order because it is the easiest way to enter the property. He said nothing the Applicant has submitted demonstrates that he has legal access.

Roger Thomas noted the modified Plan dated 3/31/15, to which the Fire Chief referred, should be marked as Exhibit A-12.

He also noted that Mr. Piccola's report date 4/16/15 should be marked as Exhibit 0-6.

Roger Thomas explained there are 2 things the Board can do. He said the Board can take a vote re: Sec. 35/36 relief being sought or revisit the issue regarding title. He reiterated the Board has no jurisdiction over title however they can refer this matter back to Mr. Berry.

He said the next issue is whether there is safe and adequate access for emergency vehicle equipment. He noted the Board can rely on the testimony of the Fire Chief, who is charged with safe and adequate access for his equipment, if they so choose.

He concluded by saying, that is the Board's decision to make at this time.

Mr. Keller noted that what is proposed is an extraordinarily long dead end over sub-marginal physical access. He said the 1<sup>st</sup> ½ mile access is a dirt road in questionable state of repair. He said he could not vote for this, in all good conscience, so made a motion for denial.

Roger Thomas explained the motion is to deny the Application so, a yes vote is a vote to deny.

**Action:** A motion was duly made by Mr. Keller, seconded by Mr. Sikkes, to deny LB#06-13 Clark, Block 801, Lots 1 and 2.01 No road frontage. Roll call vote: Anderson, Green, Keller, Mohr, Avery, Shoemaker, Sikkes, Waldron and Price – yes (to deny).

At this point, there was a brief recess.

(Audience members who left, cautioned everyone, there was a large bear outside the front door.)

**LB#02-15 Buck Hill Properties. LLC (Buck Hill Brewery & Rest.)** Blk. 2001, Lot 1.01, 45 Rt. 94 – Prel. & Final Major Site Plan, + Bulk Variances

Chairwoman Waldron noted for the record that she knows Regina Vininski who owns 50% of the property. She clarified there is no personal relationship and if there are no objections, she is fine hearing this application.

The following were sworn in:

Jay Mena, Blairstown, NJ, 50% owner of the property, Ray O'Brien, the Architect, of Blairstown, NJ, and Pat McClellan, the Engineer, of MCB Engineering Associates, Totowa, NJ.

Richard Keiling, attorney for the applicant explained this site was formerly The Forge Restaurant.

The following exhibits were marked:

A-1 Color rendering of the proposed Brew Pub building by Ray O'Brien

A-2 Rendered architectural drawings by Ray O'Brien

Mr. O'Brien explained the drawings. He pointed out they are adding about 2,000 sq. ft. to the existing 2,200 sq. ft. building. There is 793 sq. ft. in back to encompass a refrigerator and cooler. Also, there will be a new men's and women's room. He said the remaining 1200 sq. ft. will encompass the brewery which will be off to the left side. The banquet room on the second floor, will remain, for small parties.

He noted there will be 85 seats which is based on the use of the existing septic, which will be reworked. Parking will be available for 40 cars. Main entrance is flanked with handicap parking. A paved parking lot is anticipated to be finished by year end. Driveway entrances will be maintained as they are now.

There will be small 12 sq. ft. signage which is under the percentage stated in the Ordinance.

Patrick McClellan, PE, explained the landscape & lighting, and soil erosion & sedimentary control plans which were modified on 5/6/15 by Stewart Surveying & Engineering, as suggested by Ted Rodman's report of 4/16/15.

Ted Rodman's Report of 5/13/15 was reviewed.

Mr. Mena noted hours of operation which may be revised. There will be 6 to 8 full-time employees and 6 to 12 part-time employees, based on the day of the week. He plans to be there full time. He noted employee parking may be at the Fountain Mall where he owns a bar for the last 16 years. If business permits, he may provide a car to transport employees to the Brew Pub.

Mr. Mena revealed he owns a farm in Knowlton where he intends to grow hops & wheat. He plans to give the spec grains, used in the brewing process, to the local farmers, from whom he will buy local-raised Angus beef. The goal is to have a farm-to-table establishment.

He said he's applied for a license at the Federal level, which takes between 90 to 120 days. Once it is approved, he plans to apply at the State level which license takes between 9 to 12 months. If all goes well, he said he could possibly open November or December. He said they probably won't have the brewery on line until April, May or June of 2016. In the interim, he will offer the same alcoholic beverages as he does now.

They will only brew enough beer to be consumed on the premises. Mr. Mena estimates he will brew 400 barrels a year. One barrel equals 31 gallons.

It takes 5 gallons of water to brew 1 gallon of beer. The current capacity of the well is 16 gallons per minute. They plan to drill another well.

Since there is a lot of sugar used, he plans to separate the Brew Pub waste water from the restaurant waste water. They plan to have a 5,000 gal. tank which would be pumped out and transferred to the local treatment facility. Chairwoman Waldron expressed concern with amount of water usage. Mr. McClellan pointed out that 1200 gallons per week is less than a 1 family home with 3 bedrooms, would use in a week. He noted the standard, for same, allows 300 gallons per day. He also pointed out the septic code expects a higher waste than the water code.

The current sign will be moved out of the ROW back onto their property. They feel a second sign is necessary for customers coming from outside the area. They would like it lighted. Ted Rodman pointed out that a variance is needed for the second sign.

Lighting will be turned off after operation is over. 90 ft. candles will be used for brewing. Security light on the side will remain on. There will be emergency lighting on the inside.

Mr. Mena will use a heat kettle with electric element. There will be no open flames. There will be a generator, to maintain brewing, run on propane. He revealed the largest amount of waste water is used in the cooling process. The water processes from 212 degrees down to 70 degrees.

Barbara Green pointed out the plans should reflect Land Use Board not Planning Board. Also, the Position Statement for Buck Hill Rt. 519 is listed, which should be Rt. 521.

This portion of the Hearing was opened to the public. There were no comments or questions.

Roger Thomas summarized the following conditions, if the Board approves this application:

- A new septic system will be added, subject to the approval of the Board of Health
- ADA compliant access will be added
- Parking lot will be paved & striped on or before 6/1/16
- Dumpster will be screened & installed bear-proof
- Parking lot lights will be off 1 hour after closing
- Subject to approval of all outside agencies, as per Ted Rodman's report of 5/13/15 – Item #7
- Pre-construction mtg. and inspection escrow be established before start of construction-Item #10
- Lighting on the building be turned off 1 hr. after hours of operation
- Hours of operation: Sun. through Thurs. 11:30am to 11pm, Fri. & Sat. 11:30am to 1:30am.
- Granting of variances and waivers outlined in Ted Rodman's report of 5/13/15

**Action:** A motion was duly made by Mr. Sikkes, seconded by Mr. Shoemaker, to approve **LB#02-15 Buck Hill Properties. LLC (Buck Hill Brewery & Rest.)** Blk. 2001, Lot 1.01, 45 Rt. 94 – Prel. & Final Major Site Plan, Bulk Variances, and waivers with the afore-mentioned conditions. Roll call vote: Anderson, Green, Keller, Mohr, Avery, Shoemaker, Sikkes, Waldron and Price – yes.

**CORRESPONDENCE:**

NJPO Planner Mar/Apr. 2015

**OTHER BUSINESS:**

**Darst #ZB04-10** – Compliance

Roger Thomas agreed to contact Ursula Leo, Esq. to discuss conditions which have not been met before a possible amendment or new application develops.

**COAH**

Chairwoman Waldron noted she has been getting the same notification as the Twp. Committee has been receiving. She indicated the Board is seeking direction from a planner or to have a joint meeting with the Township Committee.

Mayor Shoemaker stated that the Township should get through the Declaratory Judgment and at that point, have the Joint Meeting.

Chairwoman Waldron indicated the Board members must be brought up-to-date about what the goal is now, and what has to be accomplished. She also noted it is necessary to learn how this will affect the LUB Budget, if at all.

Mayor Shoemaker interjected the townships need the Courts to come up with the rules.

**NEW BUSINESS:**

Chairwoman Waldron thanked the Board members for their kind expression of sympathy on the recent passing of her father.

**PUBLIC PORTION:**

There were no comments or questions from the public.

**VOUCHERS:** Professional services rendered.

**Action:** On a motion duly made by Mr. Mohr, seconded by Mr. Shoemaker, escrow vouchers, as attached to these minutes, were approved. Roll call vote: Anderson, Green, Keller, Mohr, Avery, Shoemaker, Sikkes, Waldron and Price – yes.

**ADJOURNMENT:**

Chairwoman Waldron asked the Board for a motion to adjourn.

**Action:** On a motion duly made by Mr. Mohr, seconded by Mr. Anderson, and unanimously carried, the meeting was adjourned at 10:36pm.

Respectfully submitted,

Marion C. Spriggs, Board Secretary