

**Township of Lumberton
Land Development Board
Regular Meeting
October 15, 2009**

The regular meeting of the Lumberton Township Land Development Board was called to order by Chairman Bennett on Thursday, October 15, 2009 at 7:32p.m.

Chairman Bennett read the following statement:

In compliance with the Open Public Meetings Act, this is to announce that adequate notice of this meeting was provided in the following manner:

On January 2, 2009 advance written notice of this meeting was posted on the bulletin board in the main lobby in the Town Hall; was mailed to the Burlington County Times and the Courier Post; was filed with the Clerk of Lumberton Township and was mailed to all persons who requested and paid for such notice.

Please note that unless otherwise modified by Resolution of the Land Development Board, all meetings shall begin at 7:30 p.m. and no new matter shall be initiated after 11:00 p.m., except where the Land Development Board, by majority vote of those present, shall specifically authorize the extension of the meeting beyond 11:00 p.m.

Those testifying before the Board on any application are required to be sworn in. The Board's Engineer and Planning Consultant have taken an oath upon their agreement and their testimony on an application is under oath on a continuing basis.

Roll Call

Citizen Member	Thomas Ammerman Robert Bennett, Chairman Thomas Bintliff Sheldon Evans Beverly Marinelli Robert Morton John Pagenkopf	
Representatives of Governing Body	James Conway, Jr. Lewis Jackson	
Alternate #1	Nancy Bleznak	
Alternate #2	Craig Potter	(Absent)
Alternate #3	Doug Alba	(Absent)
Alternate #4	Ed Borm	
Solicitor Consulting Engineer & Planner	Peter Emmons, Esq.,Gibbs,Gregory&Emmons Gregory J. Sullivan, P.E.,P.P., Remington, Vernick & Arango	
Board Secretary	Catherine Borstad	

Minutes

Regular Meeting minutes for September 17, 2009.

Motion was made by Ms. Marinelli, seconded by Mr. Morton to approve the September 17, 2009 meeting minutes. The vote was affirmative with the exception of Mr. Bintliff and Mr. Pagenkopf, who abstained, and the motion carried.

Correspondence

- a. Letter from Department of Resource Conservation regarding Right to Farm Compliant for Happy Hooves Farm located at 329 Main Street.
- b. Burlington County CADB Resolution 2009-18 in regards to 329 Main Street.

Resolutions

- a. 2009-16 Howarth, Linda and David, 15 Brook Lane, Block: 32.03, Lot: 19. Use Variance for an In-Law Suite. Approved.

Ms. Marinelli stated on pages 3 and 6; it should state that one kitchen is to be removed.

Motion was made by Mr. Morton, seconded by Ms. Marinelli to approve Resolution 2009-16 with revisions. The vote was affirmative with the exception of Mr. Conway, Mr. Jackson, Mr. Bintliff and Mr. Pagenkopf, who abstained, and the motion carried.

- b. 2009-17 Ark Road Associates, LLC (Sancoa), 92 Ark Road, Block: 36, Lot: 13.03. Amended site plan for shed. Approved.

Motion was made by Mr. Conway, seconded by Ms. Marinelli to approve Resolution 2009-17. The vote was affirmative with the exception of Mr. Bintliff and Mr. Pagenkopf, who abstained, and the motion carried.

Items for Action

- a. ***O'Hara, Michael***
3 Marriott Drive
Block 34, Lot 5.08
Zone RA/S
Bulk variance of setback for accessory structure, height of accessory structure. Variance for more than one garage either attached or unattached. Continued to November 19, 2009.

Motion was made by Ms. Marinelli, seconded by Mr. Morton to continue the application until the November 19, 2009 meeting.

- b. ***20 Maple Avenue, LLC (Cave Holdings)***
Block 13, Lot 3.91
I-1 Zone
Minor Site Plan and Use variance application. Completeness Only

Mr. Sullivan stated that the application is incomplete.

Motion was made by Ms. Marinelli, seconded by Mr. Pagenkopf to deem the application incomplete. The vote was unanimous and the motion carried.

c. Master Plan

Mr. Jay Petrongolo, Remington & Vernick Engineers presented the Master Plan to the Board.

Motion was made by Mr. Morton, seconded by Ms. Marinelli to adopt the 2009 Re-examination of the Master Plan. The vote was unanimous and the motion carried.

d. Jones, Cynthia

131 Harrogate Drive

Block 19.20, Lot 11

Zone R.2

Conditional Use Variance for Home Occupation (7:56-8:06)

Mr. Conway and Mr. Jackson both stepped down. Mr. Bleznak and Mr. Borm took their seats.

Ms. Cynthia Jones, sworn to provide testimony.

Chairman Bennett asked Mr. Sullivan if the application is complete. Mr. Sullivan stated yes.

Ms. Jones stated that she is a licensed Cosmetologist and would like to open up a natural hair service out of her home. She stated that this service is offered to clients who would like to discontinue chemical processing, such as perms, relaxers, hair colors, hair extensions and weaves. Ms. Jones stated that she only uses organic shampoo and conditioner. She stated that she would only have one client at a time. Ms. Jones stated that the clients would use her personnel driveway. She stated that there will be no advertising or soliciting. She stated that her cliental range from 25 – 65 years of age. She stated that the hours of operation will be Tuesday through Friday from 10:00 AM – 5:00 PM and 9:00 AM – 5:00 PM on Saturdays. She stated that the business will not be open on Sundays, Mondays, or Holidays. Ms. Jones stated that she will use a room in her home. She stated that a separate entrance to the room would be placed adjacent to the current residence entrance.

Ms. Jones stated that she has lived in Lumberton since 2005.

Ms. Marinelli asked if Ms. Jones would be the only employee. Ms. Jones stated yes.

Ms. Marinelli asked how many vehicles did Ms. Jones currently own. Ms. Jones stated two.

Ms. Marinelli asked if there would be only one customer at a time with no over-lap of clients. Ms. Jones stated yes. She stated that it will take 3 - 3 1/2 hours per client. Ms. Jones stated that she is proposing to have 2 clients or 3 at the most per day.

Mr. Morton asked how big the room will be. Ms. Jones stated that it is a 143 SF room which is currently the library. She stated that they will be using the existing plumbing but will need to install a sink which she intends to get the necessary permits.

Chairman Bennett asked if there will be any signs on the property. Mr. Jones stated no.

Mr. Emmons asked Mr. Jones were she currently does this work. Ms. Jones stated that she currently does the natural hair service in a salon called Essentially for You, located in Mt. Holly, NJ.

Mr. Sullivan asked if the home occupation will remain subordinate to residential use. Ms. Jones stated yes.

Mr. Sullivan asked if the garage is used. Ms. Jones stated no. Mr. Sullivan asked how the vehicles would fit in her driveway. She stated that during the hours Monday-Friday, there will only be one car in the driveway since her husband works during those hours.

Mr. Sullivan asked if there will be goods for sale. Ms. Jones stated no.

Mr. Sullivan stated that the applicant is in compliance with the Township Ordinance.

At this time Chairman Bennett opened the meeting up for public comment. There being none, this portion of the meeting was closed.

Mr. Morton stated that the driveway is about 35' long and should accommodate up to four cars. Mr. Sullivan stated yes.

Motion was made by Mr. Pagenkopf, seconded by Mr. Morton to approve the use variance. The vote was affirmative with the exception of Mr. Ammerman who voted no, and Mr. Evans who abstained, and the motion carried.

e. Cella, Linda
57 Bella Road
Block 45, Lot 1.02
Zone RA/S
Variance for allowing farm animals on less than six (6) acres.(8:06-8:34)

Mr. Mark Molz, Esq., present representing applicant.

Ms. Linda Cella, sworn to provide testimony.

Mr. Molz stated that Ms. Cella has chickens and ducks. Ms. Cella stated that she prefers chickens and ducks because they are easy to take care of. Mr. Molz stated that the birds that Ms. Cella owns are considered show birds. He stated that they are not for consumption or for sale.

Chairman Bennett asked Mr. Sullivan if the application could be deemed complete. Mr. Sullivan stated that the application is complete for the Board to hear. He stated that the issue of waste control was not presented in the application. Ms. Cella stated that she fertilizes the trees and bushes with the waste.

Mr. Molz stated that he believes the application falls under a use variance. Mr. Molz stated that Ms. Cella's property is less than an acre. He stated that Ms. Cella has chosen these pets because they are easy to take care of. He stated that Ms. Cella has a high stress job working with children who are gravely ill.

Mr. Molz stated that these small chickens are called Silkies. He stated that Ms. Cella keeps the area clean. Mr. Molz stated that the waste from these animals is organic. He stated that Ms. Cella has these animals presently on her property and was not aware she was in violation of the zoning. Mr. Molz stated that when he researched Silkies on the internet, they are classified as pets not farm animals. He stated that Ms. Cella has an extremely stressful job and these birds help her stress level.

Mr. Sullivan asked if the birds are kept in the house. Ms. Cella stated they are kept in a pen.

Mr. Sullivan stated that the pen that these birds are kept in is 1.34' away from the property line.

Mr. Molz asked Ms. Cella if the pets are kept on the property. Ms. Cella stated yes. Mr. Molz asked if the neighbors have pets. Ms. Cella stated one neighbor has two pugs. Mr. Molz asked where these pets are kept. Ms. Cella stated in the back yard and to the side. Mr. Molz asked Ms. Cella if these pets help her emotionally. Ms. Cella stated yes. Mr. Molz asked if there is any detriment to the neighbors by way of smell. Ms. Cella stated no.

Ms. Marinelli asked how many birds Ms. Cella owns. Ms. Cella stated that she has four ducks and 22 Silkies. Ms. Marinelli asked if any of them cock-a-doodle-doo. Ms. Cella stated that one does. Ms. Marinelli asked if there were any other roosters in the area. Ms. Cella stated that she can hear one down the road.

Ms. Marinelli asked how long Ms. Cella has owned these birds. Ms. Cella stated six months.

Ms. Cella stated that the birds are locked up at night and go into a fenced area during the day. Ms. Marinelli asked if they come into her house. Ms. Cella stated no.

Chairman Bennett asked if the birds are trained. Ms. Cella stated yes.

Ms. Bleznak asked if there was a fence. Ms. Cella stated yes, but if they were to fly out of the fenced area they stay in the yard. Ms. Bleznak asked if the fence is along the entire perimeter of the yard. Ms. Cella stated no.

Ms. Marinelli asked how long Ms. Cella has resided at the address. Ms. Cella stated one year.

Ms. Marinelli asked Ms. Cella if she had checked into the Township Ordinance regarding small farm animals. Ms. Cella stated no because she thought it was allowed since it is a rural area. Ms. Cella stated that everybody has these types of birds.

Mr. Sullivan asked Ms. Cella what she does for waste control. Ms. Cella stated that she scoops it and puts around her plants or she throws it away or dumps it in the back of her property by the creek.

Mr. Sullivan asked Ms. Cella if she had researched what should be done with the waste from chickens. Ms. Cella stated no.

At this time Chairman Bennett opened the meeting up for public comment.

Ed McGinley – 59 Bella Road

Mr. McGinley expressed his concerns against having these birds on the property. He stated that he feels everyone should have the ability to enjoy their pet or pets. He stated that he knows Ms. Cella enjoys these animals. However, they are not tame or trained in the sense that she can control their activity, noise level, and wandering off of the property. Mr. McGinley stated that the rooster crows excessively in the morning and continues throughout the day. He stated that he is awakened at 4:00 AM. He stated that these birds continue to crow and cackle the entire day. He stated that they are exposed to noise all day and night. He stated that due to the noise from the birds many times they have to shut their door to watch TV or talk to a

guest. Mr. McGinley stated that the rooster wanders off of Ms. Cella's property and into his yard. Mr. McGinley also expressed his concerns for health, rodent and pest concerns. He stated that for many years the neighbors have gotten along well. He stated that his wife went to Ms. Cella to try and talk about the situation with her, but Ms. Cella didn't want to talk about it. Mr. McGinley expressed his concerns about derogatory comments directed toward another neighbor from Ms. Cella. Mr. McGinley stated that when his daughter was younger she grew attached to a donkey, but the donkey did not live with them. Mr. McGinley stated that he has pictures of the birds on his property on a camera that he brought. Chairman Bennett stated that the Board would have to see actual prints.

Ms. Bleznak asked if there are more than one rooster and turkeys. Mr. McGinley stated yes. Ms. Bleznak asked if the turkeys are Ms. Cella's turkeys or wild turkeys. Mr. McGinley was not sure.

Marge McGinley – 59 Bella Road

Ms. McGinley stated that currently there are two turkeys in Ms. Cella's back yard, which are about waist high. She stated that the rooster's crow night and day. She stated that the animals are feed every morning between 5-5:15 AM which causes the birds to cackle. She stated that Ms. Cella does try to quiet them down. Ms. McGinley stated that these birds do wonder onto her property. Ms. McGinley asked the Township to stand firm that residents must have 6 acres to have farm animals. Ms. McGinley stated that these birds also go into a three season room that is attached to Ms. Cella's home. She has concerns for health hazards. Ms. McGinley stated that she heard first hand that Ms. Cella stated if she had to get rid of her birds Ms. Miller will regret it. Ms. McGinley stated that she believes Ms. Cella was just angry, but it is frightening when someone speaks out like that.

Mary Francis Miller – 55 Bella Road

Ms. Miller stated that when Ms. Cella first got the birds she asked (Ms Cella) specifically if they needed permission and they told her no. She stated that the cage is inches from her property. Ms. Miller stated that she has lived in her home for 11 years and it has always been a quiet peaceful neighborhood. Ms. Miller is concerned about her own safety. She stated that she has two dogs and one cat which she watches very carefully. Ms. Miller stated that she has been told that Ms. Cella has made threats against her. She stated that she is 86 years old and not in the position to have to live with this.

Albert Leverich –39 Ridge Road

Mr. Leverich stated that he has no objections to the owner having the birds, but then again he stated that he does not have to live right next to them. He stated that he can hear the birds from his yard which is further away from the property. He stated that there was a flock of wild turkeys that were in the area some time ago.

There being no further public comment, this portion of the meeting was closed.

Mr. Emmons stated that the applicant has requested a use variance. He stated that a use variance is a strict standard in the New Jersey Law. He stated that the applicant has to prove the positive and negative criteria. Mr. Emmons stated that it is up to this Board to determine if the applicant's testimony has met those special reasons. He stated that the applicant also has to provide testimony that they meet the negative criteria. Mr. Emmons stated that no relief under the negative criteria can ever be granted unless it can be done without substantial detriment to the public and without impairing the purpose of the zoning plan. He stated that the applicant has testified that the animals make her feel good. Mr. Emmons stated that the Board has to consider whether those feelings satisfy the public good.

Ms. Marinelli made a motion to deny the variance. She stated that there is a lot of negative testimony from the other homeowners. She stated that it is a detriment to the public and does not abide by the zoning ordinance where it is required to have six acres for agriculture use. Ms. Marinelli stated that the only positive criteria that she heard was that it helps the owner herself. She stated that the negative criteria outweigh the positive criteria, seconded by Ms. Bleznak. The vote was unanimous and the motion carried.

Mr. Bintliff stated that he believes that everyone is entitled to have pets. He stated that the number of pets involved is in excess. He stated that the neighbors are troubled by this and something needs to be done.

f. Frontier Development-Autozone
Block 15, Lot 5 & Block 60.01, Lot 1.10
B-2 Zone
Preliminary and Final Major Site Plan Minor Subdivision (8:49-9:43)

Mr. Pagenkopf stepped down.

Mr. Conway left at 8:00

Exhibits marked.

Mr. Phil Haines, Esq., Attorney representing applicant.

Mr. Haines stated that they are present for a site plan and minor subdivision application. He stated that an Autozone Retail store is planned for the site. Mr. Haines stated that they will comply with all the recommendations from the Township's staff reports.

Chairman Bennett asked Mr. Sullivan if the application can be deemed complete. Mr. Sullivan stated there are some environmental concerns, but the applicant has submitted some information regarding these concerns.

Mr. Emmons asked if this would be done through Department of the Environmental Protection. Mr. Haines stated yes. Mr. Emmons stated that they can proceed but a condition of approval would be that any environmental contamination be remedied through DEP and it would be done with DEP approvals and regulations. Mr. Haines stated that would be acceptable. Mr. Haines stated that the applicant would not settle on this property until all those issues were taken care of.

Mr. Robert Hunter, P.E., P.P., Bach Associates, 304 White Horse Pike, Haddon Heights, NJ, sworn to provide testimony. Mr. Hunter stated his credentials to the Board. Chairman Bennett stated that the Board accepts Mr. Hunter's qualifications.

Mr. Hunter stated that the minor subdivision plan proposed is to take the old railroad right-of-way and divide it into three portions. The first portion along Route 38 would be consolidated into the lot subject to the application for development. The second portion of the railroad will be consolidated into Block 15, Lot 6.02, which is owned by Pierson, and the final lot will be subdivided and held until a purchaser can be found.

Mr. Emmons asked if the current property owners of lot 1 & 7 were contacted.

Mr. Frank Smith, sworn to provide testimony.

Mr. Smith stated that he did not contact the property owners. He stated that he

contacted one and they have agreed to buy the whole back piece.

Mr. Emmons asked if the back parcel is landlocked. Mr. Sullivan stated no.

Mr. Hunter described the site plan to the Board. He stated that the only variance needed is for truck turning. He stated that the applicant is proposing an Autozone, which is an automotive parts retail store. He stated that they have added twelve additional parking stalls. He stated that the trash and a loading zone are located behind the building. Mr. Hunter stated that they received a letter from the Fire Department requesting them to widen the loading zone, which they will comply with.

Mr. Hunter stated that the site abuts Route 38. He stated that there is ample sight distance to go out of the site. He stated that the entrance is a right in right out. He stated that the NJ Department of Transportation (NJDOT) will have jurisdiction over the entrance.

Chairman Bennett asked if there are free-standing signs on Route 38. Mr. Hunter stated that the sign will comply with the Township Ordinance and will be shown on the landscaping plan.

Mr. Emmons asked if there will be cross access easements. Mr. Hunter stated that they have provided three cross access agreements for future development. Mr. Emmons asked if the entrances will change. Mr. Hunter stated that will depend on the NJ Department of Transportation.

Chairman Bennett asked what kind of store Autozone is. Mr. Hunter stated that it is strictly product supply. Mr. Hunter stated that hours of operation are proposed to be 8:00 AM – 9 PM Monday-Saturday and 10:00 AM – 7:00 PM on Sunday. He stated that the hours may fluctuate from time to time.

Mr. Hunter stated that the delivery truck would pull in off of Route 38, pull along the front of the building and then back up into the loading zone. Chairman Bennett asked what the size of the delivery trucks are. Mr. Hunter stated they are large 16' trucks. He stated that they are owned and operated by Autozone and deliver during off peak hours.

Mr. Emmons asked if the applicant in order to meet the requirement of the township ordinance, the building would have to be repositioned to allow for circular deliveries. Mr. Hunter stated yes. Mr. Hunter stated that if they were to do that they would have increased the impervious area.

Mr. Sullivan asked if it would be possible to eliminate some spaces. Mr. Hunter stated that it would be possible but not practical due to the location of the spaces.

Mr. Emmons asked if there were any other variances. Mr. Hunter stated no.

Mr. Hunter stated that they have been in contact with the MUA. He stated that since there is no accessible sewer in the area, they have been informed that they can continue to use the septic.

Chairman Bennett asked if there would be any chemical discharge into the septic. Mr. Hunter stated no.

Chairman Bennett asked if there is city water. Mr. Hunter stated yes.

Mr. Hunter showed the Board a computer generated plan of what the building will look like. He showed where the landscaping would be.

Mr. Emmons asked if there would be any facilities on the roof that would be seen from the ground.

James Leech, Frontier Development, sworn to provide testimony.

Mr. Leech stated that the mechanical systems would be located in the rear of roof. Mr. Emmons asked if they were able to be seen from road, would they be screened. Mr. Leech stated that they will be willing to comply with whatever the Board decides.

Mr. Emmons stated that it will be condition of approval that if it is needed they will comply.

Mr. Emmons asked if the signage meets the code. Mr. Hunter stated that they do not have the elevations for the sign yet. He stated that if they do not conform they would be back for approval.

At this time Chairman Bennett opened the meeting up for public comment.

Ms. Nancy Bodine-Reuter – Wilson Avenue

Ms. Bodine-Reuter had concerns regarding Autozone being allowed to have on-site septic. She stated that when she built her home six years ago she was advised that she had to tap into the public sewer, which cost her \$15,000. She stated that she was told a septic was not an option. She expressed her feelings of unfairness that she as a homeowner had no choice to have a sewer, but Autozone is allowed. She also expressed her concerns regarding a piece of the subdivision that will be sold to Pierson. She is concerned about the dust particles from the concrete. She stated that the concrete company will be 300' closer to her house. She stated that the piece of property was a buffer between her home and the concrete company.

Mr. Emmons asked if the sale of the property is a done deal. Mr. Smith stated that he has no desire to take the woods down. He stated that Pierson has been sent a contract and has agreed to the contract.

Ms. Marinelli stated that the property is zoned residential. She stated that if Pierson wanted to come in and put something commercial on it or expand his use, he would need to come back before this Board.

Ms. Bodine-Reuter stated that her sewer line has to run up hill and has to force the sewerage up the street which at times overflows into her home.

Ms. Bodine-Reuter stated that she has a problem with the fact that as a homeowner she was not able to have a septic system. She stated that one neighbor on her street has a septic system, and if they were to sell they would have to tap into the sewer system.

Ms. Marinelli stated that is under the jurisdiction of the MUA.

Mr. Sullivan informed Ms. Reuter that the issue with the septic is up to the Sewerage Authority and County Board of Health.

There being no further public comment, this portion of the meeting was closed.

Mr. Emmons asked if there was a COAH requirement. Mr. Haines stated that the applicant will comply with the current code regulations.

Mr. Emmons stated that a motion to approve the minor subdivision would be subject to

environmental remediation.

Motion was made by Mr. Morton, seconded by Ms. Marinelli to approve the minor subdivision. The vote was unanimous and the motion carried.

Mr. Emmons stated that this is a site plan with one variance; the applicant is proposing a 7,040 SF Autozone commercial retail establishment. He stated that the variance requested is a truck turning variance. He stated that deliveries are made once per week and not during peak hours. The variance is necessary because if they had to meet the code not only would they have to relocate the building they would need a variance for impervious coverage. Applicant has testified that there are no other variances necessary. Applicant has provided landscaping, driving, lighting and drainage plans and provided architectural plans. He stated that the mechanical systems will be screened if necessary. Cross access easements are also provided and signage to conform to the township ordinance.

Motion was made by Mr. Morton, seconded by Mr. Jackson to approve the site plan application. The vote was unanimous and the motion carried.

Mr. Pagenkopf returned to the Board.

Old Business

- a. 20 Maple Ave, LLC., (Cave Holdings)

Public Comment

There were none.

Comments from Professionals

There were none.

Comments from the Board

A. Bill List

Ms. Marinelli requested that the Remington & Vernick bill for the Howarth variance be pulled for clarification.

Motion was made by Ms. Marinelli, seconded by Mr. Bintliff to approve the bill list. The vote was unanimous and the motion carried.

Adjournment

Motion was made by Ms. Marinelli, seconded by Ms. Bleznak to adjourn at 9:45 p.m. The vote was unanimous and the motion carried.

Respectfully Submitted,

Caryn L. Cutts
Land Development Board Recording Secretary