

BOROUGH OF TUCKERTON LAND USE BOARD
December 19, 2019

In accordance with the provisions of the Open Public Meetings Act, Calvin Morey opened the meeting of the Tuckerton Land Use Board on Thursday, December 19, 2019, at 7:00 p.m. in the Tuckerton Borough Hall.

FLAG SALUTE: Calvin Morey led the flag salute.

SUNSHINE STATEMENT: Carol Scurman read the provisions of the Open Public Meetings Act.

ROLL CALL: Members of the Land Use Board in attendance were Mayor Marshall, James McAndrew, Keith Vreeland, Greg Brojack, Robert Rue, Don Rocheskey, Wayne Tonnesen, and Calvin Morey; Tom Hennaut, Joan Rosenberg, and Peter Gioiello, were absent.

MINUTES:

Mayor Marshall made a motion to accept the minutes of the November 14, 2019 meeting as written. Keith Vreeland seconded the motion. On roll call, all voted yes, with the exception of Robert Rue who abstained. The motion was carried.

INVOICES:

Woodland, McCoy & Shinn totaling \$1,750

11/14/19	66427	OCEAN Inc. B49, L5	\$700.00
11/14/19	66428	General Board Representation-October	700.00
11/14/19	66429	H2 Investments (Sheltered Cove) B 40, L 1 & 2	100.00
12/6/19	66528	General Board Representation-November	50.00
12/6/19	66530	Mitarotonda Bulk Variance B113 L90	200.00

T&M Associates totaling \$392.00

11/27/19	FMK378358	Mitarotonda Bulk Variance B113 L90	392.00
----------	-----------	------------------------------------	--------

A motion was made by Jim McAndrew and seconded by Keith Vreeland to approve the payment of bills on the availability of funds. On roll call vote, all members agreed. The motion was carried.

CORRESPONDENCE:

- 11/25/19 From Bob Shinn of Woodland, McCoy & Shinn regarding re-appointment as Land Use Board Attorney.
- 12/9/19 From T&M Associates regarding the re-appointment of Mark Rohmeyer, PE, PP, CME, assisted by Jason A. Worth, PE, PP, CME as Land Use Engineer and Planner.
- 12/11/19 From T&M Assoc. re: Resolution Compliance-4th Review for Preliminary & Final Major Site Plan, OCEAN Inc., B 49, L 5, 375 E. Main St.
- 12/18/19 From Tom Hennaut re: Resignation from serving on the Land Use Board due to health problems.

A motion was made by Keith Vreeland to accept his resignation with regrets. Jim McAndrew seconded the motion with regrets and on roll call vote, all members voted yes. The motion was carried.

NEW BUSINESS:

NICHOLAS MITAROTONDA, JR.
BULK VARIANCES
BLOCK 113, LOT 90 / 274 HERON RD., TUCKERTON, NJ

Mr. Shinn advised the board Mr. Mitarotonda is not represented by counsel; however, his engineer is in attendance. Mr. Shinn swore in Nicholas Mitarotonda, 274 Heron Rd., Tuckerton, NJ. He testified he purchased land in January of this year, closed on it in March, and hired Zarilli Homes to build his retirement home. Late September or early October he was informed one of his AC units was an unacceptable height according to Tuckerton Borough's standards.

Mr. Shinn swore in the applicant's engineer, Tim Lurie, principle of DW Swift, 1415 Rt. 34, Wall, NJ. He was accepted as an expert in his field by the Land Use Board. Mr. Lurie testified this house is in the flood elevation of 9. According to Tuckerton Code, everything needs to be 3 feet above elevation 12. There is an

air handler in the garage set at elevation 11.3 which is 8 inches below Tuckerton's requirement of 12 inches. The air handler is approximately 1.5 feet wide, 5 feet long, 1.5 feet high. It is attached to the bottom of the floor joists of the first floor of the house which is set at elevation 13. The applicant is asking for relief of the air handler being 8 inches below requirement.

Mr. Shinn asked that Mark Rohmeyer's engineer review letter dated 11/27/19 be marked into evidence as B-1. Also entered into evidence were the following submitted by the applicant:

- A-1 A completed application form package dated.
- A-2 An elevation Certificate prepared by Stanley Hans Jr., PLS
- A-3 Architectural Plans entitled, "Mitarotonda, 74 Heron Rd, Tuckerton NJ 08087, Ocean County" prepared by excel Homes, dated 1/30/19, last revised 2/2/19
- A-4 Plot Plan entitled, "Plot Plan 274 Heron Rd, Lot 90, Block 113, Borough of Tuckerton, Ocean County, NJ, signed by RC Burdock, PE, dated 3/29/19, last revised 10/10/19
- A-5 As-Built Survey entitled, "Final As-built Survey for 274 Heron Rd, Lot 90 in Block 113, Borough of Tuckerton, Ocean Co; NJ" signed by Stanley Harris Jr., PLS, dated 9/18/19, with no revisions.
- A-6 Notices
- A-7 Letter from the surveyor

Mr. Rohmeyer advised the board the letter that was submitted by the applicant's surveyor confirms the elevation at 11.3 for the air handler. He says the condition does not adversely affect the home from obtaining flood insurance at reasonable rates. It is above the FEMA flood elevation.

Wayne Tonnesen asked if the air handler is perpendicular to the rafters. They said it is. He asked, if it was possible to run it parallel to the rafters. He was told it was not.

Keith Vreeland asked if the air handler was shown on the original architectural drawings. The applicant's builder and property manager of Zarilli Homes, Robert Giovine, 43 Water Way Ct., Brick, NJ was sworn in by Mr. Shinn. He advised he is authorized to speak in behalf of Zarilli Homes. Mr. Giovine testified, with a two-zone house, they have been doing this application, not realizing the calculation error. The house was not designed to have a utility room or furnace on the first floor. The only way to rectify this would be to add on a utility type of closet which would detract from the appearance of the home. Since it's a two-zone house, there is already a unit in the attic space. The air handler was not specified on the architectural plans, which is typical for residential plans.

Jim McAndrew asked when this violation was brought to the applicant's attention. He was told when they applied for a CO. The Flood Certification triggered it.

Mr. Rohmeyer asked Mr. Lurie to provide testimony to support the granting of the variance. Mr. Lurie said there is no danger of the materials being swept on to the neighboring properties since it is secured to the ceiling of the garage and located 2.3 feet higher than the base flood elevation. As earlier discussed, there is no other desirable location. It complies with the FEMA regulations; they are just asking for relief from the Tuckerton ordinance standards.

Mr. Rohmeyer said the only potential negative impact is Tuckerton Borough's FEMA CRS Program Rating. The CRS Program is a way for the borough to obtain discounts on flood insurance rates. Currently, the borough is not participating in the program. However, if the borough did wish to participate, this may affect how much discount the

borough would be able to receive. Since the borough requires an additional three feet over FEMA, they would be a candidate to get a bigger discount. By granting residents this type of variance, they may lose a couple points off their score, which would affect the borough.

Mr. Tonnesen asked if this could be relocated under the stairs in the foyer. He was told there is not enough room since there's a utility room there. Also, it is an open foyer so it would be an impact on the aesthetics of the foyer.

Mayor Marshall asked the applicant what he would do if the variance was not granted. He said he would have to submit for a plan to add a closet eight feet up, which would not be aesthetically pleasing.

Mayor Marshall asked, if we did grant this variance, would we be setting precedent. Mr. Shinn advised, each piece of property is unique, however, we have had this situation before about five years ago. That case there was a bigger deviation and the board approved it, although there were other complications that went beyond the board with the Construction Dept. Mr. Vreeland said, even though each case will have to apply individually, a precedent was set five years ago.

Greg Brojack said his house was built two years before Sandy so his furnace is approximately 6' 6" putting him in this same situation. Mr. Rohmeyer said he would be grandfathered in.

Mr. Rohmeyer said the FEMA elevations can change, and they will change throughout the years as studies are being done. But from what he heard, the three feet over the FEMA recommended nine elevation came to the elevation because of where the water actually landed during Sandy at Tuckerton Beach.

Mr. Lurie summed up the positive reasons for keeping it in present location is it is only eight inches below Tuckerton's ordinance criteria, it is conforming with the new construction in the area, and does not affect the aesthetics of the house.

Mr. Vreeland asked the applicant if he has moved into the house. He said he moved in with a temporary CO. Mr. Vreeland pointed out relocating the air handler is an additional hardship to the applicant.

Mr. Vreeland made a motion to approve the variance after hearing testimony and the additional hardship on the homeowner who is currently living in the home.

Mr. Shinn suggested a caveat be added that this variance is only limited to this, and no other future improvements. The applicant would be required to come back to this board if any other issues need to be addressed. Mr. Vreeland agreed.

Greg Brojack seconded the motion with the caveat.

On roll call vote:

Mayor Marshall voted yes.	Jim McAndrew abstained.
Keith Vreeland voted yes.	Greg Brojack voted yes.
Robert Rue voted yes.	Don Rocheskey voted yes.
Wayne Tonnesen voted no.	Calvin Morey voted yes.

The motion was carried.

Discussion followed regarding ways to avoid the necessity of this type of variance. Mr. Shinn asked if requiring an as-built survey for the foundation would help in a situation like this. Mr. Vreeland said, by the time of the as-built survey, the mechanical systems are already in. Mr. McAndrew said he didn't feel granting this one variance would cause a hardship for the borough. Mr. Vreeland said, it's rare that the municipality gets a mechanical layout unless it is requested. Mr. Morey asked if we could modify our flood-zone area to require a mechanical layout. Mr. McAndrew said that would have to go through Construction. It was suggested this board send a letter to Phil Reed saying, because of this variance, mechanical layouts be required.

YEAR END REPORT – 2019

Mr. Shinn advised the Year End Report is a resolution we will adopt in January.

The following recommendations were made in our 2018 "End of the Year Report:"

Invasive Species Ordinance – *Addressed.*

Height limitation requirement in the B-3 Zone,

Foundation/piling plan survey requirement prior to building.

Explore the possibility of fee shifting for reoccurring appeals by applicants.

The following recommendation was made this year:

Increase the escrow fees to more accurately reflect the estimated cost – *in the process.*

Mr. Vreeland asked if the requirement for foundation/piling plan survey should be addressed with an ordinance. Mr. Shinn said it should be an ordinance. Mr. Vreeland said he would ask Chris Connors take a look at that.

Mr. Vreeland said he has been approached regarding the Sign Ordinance and specifically LED signage.

Discussion regarding permitting LED signage followed which included the possibilities of updating the ordinance to permit a limited percentage of the overall sign, limiting it to purely static or limited static signage. It was also noted, the ordinance should not be changed for one individual situation and also how LED signage will look aesthetically.

Mr. Rohmeyer said he would email Mr. Vreeland sign ordinances from Berkley Township and Pt Pleasant Beach. It was agreed Mr. Vreeland and Mr. Rohmeyer would work on the sign ordinance.

Mr. Vreeland said addressing a height limitation in the B-3 Zone is something we should address since it's the only zone in the borough without a limitation.

Mr. Vreeland said the only other issue that came up for one individual this year was regarding runoff. The pros and cons of addressing this problem with legislation was discussed. Mr. Shinn said he would add this issue to the resolution; Mr. Rohmeyer and Mr. Vreeland said they would look into it.

Mr. McAndrew said at a previous Council meeting there was a discussion with regards to the maintenance of the piers and docks, as opposed to the bulkheads. In our ordinance we require once a bulkhead is put in, it be maintained along with piers and docks; however, the state says we do not have the authority to enforce the docks and piers. If there has never been a bulkhead on the property, we cannot require a bulkhead to be put there until the property changes ownership. After speaking to several people at the state and county level, he thinks we will be able to enforce the piers and docks because he has been told all the DEP wants to see is the plans for the installation, not the maintenance. He has to do bulkhead inspections in January. Mr. Connors said a bill has been introduced in the assembly to go to the senate allowing us to do the enforcement. Discussion followed regarding the Riparian Rights of lagoons. Mr. Shinn said he believes the developer who dug out the man-made lagoon owns that land. He said he will add that to the resolution.

ADJOURN

Prior to adjourning, Mr. McAndrew asked for a moment of silence in memory of his good friend and Mayor Marshall's husband, Bill Marshall.

There being no further business, a motion was made by Jim McAndrew, seconded by Keith Vreeland and unanimously agreed to adjourn the meeting.

Respectfully submitted,

Carol Scurman
Land Use Board Secretary