



## MINUTES

### MERCHANTVILLE JOINT LAND USE BOARD

Borough Hall Council Chambers  
1 West Maple Avenue, Merchantville, NJ 08109  
Tuesday, June 12, 2018, 7:30pm

1. **CALL TO ORDER.** The meeting was called to order at 7:30pm.
2. **OPEN PUBLIC MEETINGS ACT.** The Chairman stated that the meeting is being held in accordance with the Open Public meetings act.
3. **PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE.** The Chairman led the pledge of allegiance and moment of silence.
4. **ROLL CALL.** The following Board members were in attendance: Chairman Patrick Brennan, William Lammey, James Uricchio, L. Scott DiSimone, Jessica Stewart, Eric Benjamin, Louis Fiume. It was noted that Mr. DiSimone is replacing Councilman Fitzgerald as the Mayor's designee for the remainder of 2018. Also present were Matthew Madden, Esq., Borough Solicitor, Mara W. Wuebker, PP/AICP, Community Development Director, and G. Jeffrey Hanson, P.E., C.M.E., Board Engineer. The following Board members were not in attendance: Councilman Griffin Kidd, Stephen Selverian, and Daniel Licata.
5. **PUBLIC HEARING.**
  - A. **Application # 2018-03**  
**Chris Claeys & Ingrid Juliano,**  
**210 Browning Road, Block 15, Lot 4, Zoning District R2**  
**Amended variance to change location of previously approved 160' SF shed, and a height variance to construct a garage with building height of 20.'**

The Applicants were sworn in. Mr. Claeys is the fiancé of Ms. Juliano, who owns the subject property. Mr. Claeys presented testimony and responded to questions from members of the Joint Land Use Board, the Board Engineer, and Mr. Francis Ryan, an attorney on behalf of a neighbor, Judith Dawson who resides at 16 Myrtle Avenue<sup>1</sup> as follows:

1. Mr. Claeys stated that they reside in a farmhouse dating back to the 1870s. It is a 2.5 story gothic revival style farmhouse with a 12/12 pitched roof. They want to construct a garage that will match the size and style of the house. They are proposing a 20 x 24 garage (480 SF) that is 20' high that will be located in the northeast corner of the property. 15' high is permitted by ordinance in the same exact location.
2. Mr. Claeys addressed the comments contained in the Board Engineer report. He urged the Board to focus on the roof height, rather than most of the questions raised by the Board Engineer in his letter with regard to drainage because they are not requesting a variance for location or square footage. The amount of rain water runoff from the proposed garage would be the same whether the height of the garage was twenty feet (20') or fifteen feet (15') and regardless of the pitch of the roof. He testified that the soil is sandy and they have never had any pooling or drainage problems and the neighboring property is at a higher elevation. He believes that their property is the low point of the surrounding properties. He states that the

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<sup>1</sup> Mr. Ryan referred to it as Wisteria Lane, believed to be inadvertent error.

Board Engineer is requesting him to do dry wells, which would be digging holes in sand to replace it with pvc pipes and filled with sand, which he does not think is reasonable. Mr. Claeys states he has dewatering and creek and river diversion experience, so he is familiar with drainage. He responded that he is not an engineer. He referenced a 5' grading requirement around structures that he would abide by. He feels that their proposed garage should be treated the same as other 480 SF garages being built in the Borough. Drywells are not required by code.

3. There was debate back and forth between Mr. Hanson and Mr. Claeys regarding the applicability of drainage questions and the effect of the height of the building on stormwater. Mr. Hanson explained that since he did not receive a grading plan with the application, he just wants to ensure that there will not be any adverse drainage impacts of the structure on adjacent properties. Mr. Madden and the Chair further explained that the Board Engineer's questions and concerns are relevant to the Board, and that the review letter provided to the applicant was a matter of courtesy so that the applicant is aware of his questions and any of his concerns, in order for the applicant to be prepared when giving testimony.
4. With regard to the specifics of the proposed garage, Mr. Claeys explained the garage is single story with a vaulted roof area. There will be 6 x 20 ceiling joists on either end of the structure to tie the roof and walls together and to mount the overhead door. The lofted areas on either end of the garage will not be finished or usable floor space. The garage will not be used for a home occupation or for commercial purposes; it will be used for typical garage uses, like storage and vehicle storage. At this time, they anticipate one vehicle being stored in it, though it is feasible to move motor vehicles in such a way that a second vehicle could be stored in it if wanted in the future. The color will be avocado with white trim. All building codes would be followed relative to building materials which would be wood framing with an asphalt shingle roof. There is no plan to put in electricity/utilities at this time, but intends to do that in the future. He is also proposing to extend an existing concrete driveway, which will consist of combination of crushed stones and concrete.
5. Mr. Claeys provided supplemental exhibits and stated that the proposed garage would be blocked from view of most neighboring properties by trees and that the adjacent property is at a higher elevation. He provided Exhibits A-1 and A-2, which are views of the back yard of the adjacent property at 16 Myrtle Avenue.
6. Mr. Ryan, the attorney for a neighbor, Judith Dawson who lives at 16 Myrtle Avenue, questioned the applicant whether he measured the angle of the roof lines of the house, which the applicant responded yes. Mr. Ryan raised the fact that the Applicant is proposing two accessory buildings on the property, one of them an existing oversized shed, which he believes triggers a new variance for tonight. Mr. Madden and Ms. Wuebker indicated that it is an amended variance as the location of the shed that was previously approved by the Board when they received variance has now changed. Mr. Ryan stated that his client is not taking a position with regard to moving the existing oversized shed to the other side of the property. However, they do object to the proposed garage because their backyard adjoins the applicants' side yard and a structure that is 20' high, located 6' from the property line, will dominate their view. He asked whether the Applicant could construct the garage with the identical roof pitch while being compliant with the maximum permitted accessory building height of 15.' Mr. Claeys responded that he could not because it would result in a reduction of the useable wall height. Mr. Ryan asked what physical conditions of the property rise to a hardship for the applicant that would give rise to a variance. He noted that the Applicant has the burden of proof for this c variance application.

7. Mr. Claeys stated he believes the unique physical conditions are the 1870 farm house that they are trying to be in keeping with the architectural style and states it would be a hardship to move the garage to another location because that would require an additional curb cutting at Browning Road, construction of a second driveway, which would cause a different variance for exceeding the allowable impervious coverage, as well as removal of a wooded area.
8. Ms. Elizabeth Merritt, who resides at 206 Browning Road, was sworn in to provide testimony. She stated that she supports the application. She lives next door and shares a driveway with them. (The Board looked at an excerpt of Sheet 3 of the Borough Tax Map; it was determined that Ms. Merritt lives at Block 15, Lot 2 and the neighbors who are objecting live at Block 15, Lot 8). Ms. Merritt went on to add that she doesn't think it will affect the neighbor's air and light; two months ago, there was trees between the properties. She said she 100% supports the application.
9. Board members discussed whether roof pitch would add more impervious coverage area, how the gutters and gutter extenders would have to be directed to the center of the yard. Board members also discussed various types of roof pitch 10/12 vs. 12/12 that may be a compromise solution to bring down the height of the structure, but wouldn't result in a modern garage roof style. Mr. Madden instructed the Board that they were limited to the applicant's proposal, unless the applicant wished to consider other alternatives, which the Applicant responded that he did not. Mr. Claeys indicated that he is a tall man and wants to have the amount of head room proposed. The Board's proposed alteration would result in an interior wall height of less than 8', which was not desirable.
10. Mr. Ryan of Green, Lundgren & Ryan, addressed the Board, requesting the Board to consider the burden of proof for a c(1) variance and c(2) that the applicant had not demonstrated any hardship that exists which would justify a variance. He also indicated that the minimum setback for accessory buildings were set at a small distance from property lines in light of the maximum allowable height of accessory structures to ensure no negative impact on neighboring properties.
11. Mr. Madden addressed the Board regarding the burden of proof for the applicant that is inherent with a c(1) or c(2) variance. Specifically, Mr. Madden summarized the requirements for a hardship c(1) variance; he also summarized the C2 requirements, specifically that the Board needs to determine if the variance advances one of the purposes of the municipal land use law, which are numerous, such as promote desirable environment through creative development techniques and good civic design, and that the Board needs to consider whether the variance would substantially impair the intent and purpose of the zoning ordinance. Ms. Wuebker added that the Board needs to consider whether the variance can be granted without substantial detriment to the public good, i.e., the neighbors.
12. Mr. Lammey stated that the Zoning Ordinance has taken into consideration the allowable height of an accessory structure, when it permits a structure to get as close as 6' to the side property line and 3' to the property line, and that is why it only allows 15.' Mr. Uricchio stated that though the garage is very attractive, he doesn't think that the applicant has met its burden of proof. He also doesn't think that the roof pitch matters as much as it would if the proposed garage was located closer to the street. Mr. Fiume stated that he thought the proposed garage would be very nice.

Mr. Uricchio made a motion to deny the application, which was seconded by Mr. Benjamin. The vote on the motion was as follows:

Chairman Brennan	Deny
William Lammey	Deny
James Uricchio	Deny
Jessica Stewart	Deny

Eric Benjamin	Deny
Louis Fiume	Deny
Scott DiDimone:	Approve

**B. Application # 2018-02**

**Atilda Conteh,**

**141 East Park Avenue & 30 Cove Road, Block 59, Lot 19; Zoning District: R3**

**Use Variance to revert Single Family Dwelling to 3-unit Multi-Family Dwelling**

The Applicant was sworn in. Ms. Conteh presented testimony and responded to questions from members of the Joint Land Use Board and the Board Attorney as follows:

1. Ms. Conteh lives at 141 East Park Avenue. She fell in love with the Victorian architecture of the structure as she is originally from the United Kingdom. She purchased the property 8 years ago when she was 23 years old. She has experienced a series of unfortunate events since that time, including a number of housing repair issues, tenants who put rocks in the toilet when they were getting evicted for failure to pay rent, and most recently awoke to a leaking roof. She purchased the property originally as a source of financial security, but it has been a money pit.
2. She testified that she received approval from the Joint Land Use Board to extend (expand) her triplex several years ago, but that her contractor took \$13,000 from her, which she saved while in college and working two low paying jobs, but the contractor never did any of the work. She testified that she has tried to obtain a copy of the police report, but the police officer couldn't locate it; one of the police officers remembers the matter and is currently looking for it.
3. Mr. Madden and Ms. Wuebker advised that the records indicate that she actually did not receive approval for the expansion of the non-conforming structure based on the minutes of the meetings in October 2011 her application was deemed incomplete because it did not have a survey or plot plan. During that meeting, Mr. McCauley, the owner's (step) father appeared on her behalf. On February 14, 2012 the Board was scheduled to hear the application, but neither the applicant, nor a representative appeared on her behalf. The use variance application was not pursued further by the applicant from that point forward.
4. Ms. Conteh responded this was news to her. She was under the impression that she received approval. That her mother's husband, who was an attorney, was representing her and he indicated that she did receive approval for the extension (expansion). She states that this news is further indication of how naïve she was at 23 years old, as he also took money from her.
5. The hearing was briefly interrupted. Mr. DiSimone recused himself from the application as the Mayor's designee he cannot hear use variance applications.
6. The Chairman indicated that she received a notice of abandonment of non-conforming uses in 2017. Ms. Conteh stated that she is not sure why she has received the notice of the abandonment by the Township because she has been living in the first floor unit. Ms. Wuebker indicated that there is some discrepancy between the applicant and the Borough about her living at the property, but is told that her driver's license shows 141 East Park Avenue as her residence. Ms. Conteh stated she has been living there for the past six years.
7. Ms. Wuebker stated that the Borough has been having monthly vacant and abandonment property meetings; properties are required to be registered, and the Borough is taking measures to try to get properties to be rehabilitated and brought to productive use, and to stabilize and revitalize the residential neighborhoods. Ms. Wuebker said that it is her understanding the

upstairs has been completely gutted for a number of years and the other rental unit on Cove has been vacant.

8. Ms. Wuebker went through the positive and negative criteria for a use variance. She stated that it is likely that the applicant would meet the positive criteria b/c the site could be seen as suitable as it was formerly used as a triplex and because it would likely be a hardship to make her use the property as a single family, given the unique characteristics of the structure (two separate fronts – one on Park and one on Cove). However, it was her opinion that the Applicant could not meet the negative criteria. The Zoning Ordinance provides for detached single-family dwellings, and the intent is to make non-conforming structures more conforming over time; the Master Plan states this planning district is intended to enhance the single-family residential character and improve the care of the structures in the district. It would be inconsistent with the intent of the Master Plan and Zoning Ordinance to allow the property to revert to a triplex. Given the uniqueness of the structure, she feels 2 units would be more appropriate. There is a twin (attached single family) on Cove Road next to her, a single family on Park, and a twin next to that. The duplex on Park Avenue could be converted back to a single family. There are a number of same style houses on West Walnut that are single-family.
9. In response to questions from the Board, the Applicant testified that there are 3 separate entrances to each unit and three separate electric meters, and the structure has not been altered internally to reduce the number of units. She stated that when she purchased the property she intended on relying on income from the rental units. Ms. Wuebker stated that the rental registration records at Borough Hall indicate that the rental units have been vacant since at least 2013. Ms. Conteh stated that she had tenants before that.
10. The Board asked the Solicitor whether the minutes of the prior application in 2011 and 2012 indicated that this was a pre-existing non-conforming use. The Solicitor said that it did; that the Application was for the expansion of a pre-existing, non-conforming use, thereby including some recognition as to the pre-existing, non-conforming status of the Property as a triplex.
11. The Board Solicitor advised the Board that there must be an intent to abandon the non-conforming use. The Board Solicitor asked if she would like to amend her application from a use variance to request a certification of the pre-existing non-conforming use of the property as a triplex.
12. There was a discussion about the location being across from auto repair use on Cove Road and across from the former Rita Marie's pizza. A Board member asked whether she intends to rehabilitate the upstairs. She said yes that she would like to move to the second floor at some point in the future once it is rehabilitated and rent out the other two units (the downstairs of the duplex, and the unit on 30 Cove Road).
13. Several Board members stated that they did not believe there has been an intent to abandon the pre-existing non-conforming use. Mr. Lammey made a motion that was seconded by Mr. Benjamin to approve the application for a certificate of pre-existing non-conforming use as a triplex. The voting on the application was as follows:

Chairman Patrick Brennan	Yes
William Lammey	Yes
James Uricchio	Yes
Jessica Stewart	Yes
Eric Benjamin	Yes
Louis Fiume	Yes
Scott DiSimone	Recused

14. The Applicant thanked the board for their consideration on this matter.

**6. CALENDAR OF OLD BUSINESS.**

**A. Resolutions**

**1. Shed Variance, Sharon Hunter Nikolaus, 27 Franklin Avenue, Block 30, Lot 7**

Mr. Uricchio made a motion that was seconded by Ms. Stewart to approve the resolution for Nikolaus shed on Franklin Avenue. All members present voted in favor.

**B. Meeting Minutes**

**2. April 10, 2018 Meeting Minutes**

Mr. Lammey made a motion that was seconded by Ms. Stewart to approve the April 10, 2018 meeting minutes. All members present voted in favor.

**7. ADJOURNMENT**

There was a unanimous decision to adjourn the meeting. Meeting was adjourned at 9:10pm.