



**MINUTES**  
**MERCHANTVILLE JOINT LAND USE BOARD**

Borough Hall Council Chambers  
1 West Maple Avenue, Merchantville, NJ 08109  
Tuesday, March 26, 2019, 7:30pm

1. **CALL TO ORDER.** The Acting Chairman, Mr. Lammey, called the meeting to order at 7:30pm.
2. **OPEN PUBLIC MEETINGS ACT.** Mr. Lammey read the notice on the agenda explaining the various methods the meeting had been publicized.
3. **PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE.** All persons present stood for the pledge of allegiance and moment of silence.
4. **ROLL CALL**

Benjamin	Brennan	DeSimone	Fiume	Fitzgerald	Lammey	Licata	Stewart	Uricchio	Woods	Wuebker
Present	Abstain <sup>1</sup>	Absent	Present	Absent	Present	Present	Present <sup>2</sup>	Present	Absent	Present

The Board Attorney, Mr. Matthew Madden, Esq., was also in attendance.

**5. OLD BUSINESS**

Approval of Meeting Minutes. Mr. Uricchio made a motion to accept the March 12, 2019 meeting minutes as presented. Mr. Fiume seconded the motion. The following Board members voted in favor of the motion.

Benjamin	Brennan	DeSimone	Fiume	Fitzgerald	Lammey	Licata	Stewart	Uricchio	Woods	Wuebker
Abstain	Abstain		Yes		Yes	Yes		Yes		Yes

The Board took the agenda out of order in order to wait for a board member to arrive.

**6. PROFESSIONAL COMMENTS**

Ms. Wuebker advised that there will be no storm water training this evening. It is listed in the professional comments section of the agenda, so it isn't forgotten by the Board.

**7. NEW BUSINESS**

Gary E. Meyer, 204 Browning Road (Block 15, Lot 3); Certificate of Non-Conformity for a Duplex, pursuant to N.J.S.A. 40:55D-68.

The Board took a ten minute recess waiting for board member Stewart to arrive in order to provide the applicant with the benefit of the most number of eligible voters. After about 10 minutes, Mr. Lammey asked the applicant if he would like to wait longer for the remaining board member to arrive. Mr. Meyer advised that he had treatment at the VA hospital today and isn't feeling well. He wants the matter to move forward without the remaining board member.

<sup>1</sup> Chairman Brennan was sitting in the audience. He owns property within 200' of the subject property.

<sup>2</sup> Ms. Stewart arrived at the meeting around 8pm.

Mr. Madden swore in the Applicant. He testified that he lost a purchaser for the sale of the property. He now has another agreement he can move forward within 30 days. He is very upset that he has to go through this process. He said he is very ill and doesn't have long to live. He is upset that he has to be here. He would never think that his house was not a duplex. He talked to a Zoning Officer in Millville who said this isn't common practice. Mr. Meyer disagrees with the reliance on the case law Mr. Madden cites in his letter regarding non-conforming uses, stating it's not a published opinion. Mr. Lammey advised him that the Board was holding a special meeting for him and that this is the process required by law.

Mr. Madden explained that the use is not a permitted use in the zone; that is why we are here. It's a State law. It's not Borough law. Ms. Wuebker explained that she receives questions all the time from purchasers and realtors. The process for a certificate of non-conforming use is set forth in the municipal land use law. The zoning office can only make a determination of legal non-conforming use within one year from the adoption of an ordinance that makes a use or structure non-conforming. After one year, jurisdiction lies solely with the Board. She thinks the one-year time frame makes sense because she would not have knowledge beyond that time frame. It is better that such a matter be determined by the Board which is comprised of residents who have lived in the community and have knowledge and context of the neighborhood over the years.

There was a discussion about the relevant time period for grandfathering. Ms. Wuebker stated she researched the property records in the Borough. While it is not certain, it is very likely that the structure would be considered a legal non-conforming use as a duplex. The structure was built in 1941 by the previous owner. It appears zoning in the Borough went into effect in 1956. She found a Tax Assessor's field card from 1971 that identified the building as a 2 family dwelling. The Applicant states it was used as a duplex when he bought it. The harder question is whether the grandfathered use is considered abandoned by the applicant.

In response to a question from a Board member, Mr. Madden advised there is no state law that provides a definitive time frame for it being vacant to be considered abandoned. He advised whether a use is considered abandoned is a high threshold. There has to be intent to abandon – some overt act or failure to act. What has happened since Mr. Meyer owned the property; and did that abandon the duplex use? Mr. Madden quoted case law about whether there was a use of the premises other than the non-conformity.

In response to questions, Mr. Meyer testified he purchased the property around 1999. He treated the 'top portion in the back' as his office. At some point, he had people live on the first floor. Periodically, his mother and his brother stayed in the first floor unit. There are two separate units; he has been paying taxes and paying utility bills as two units since he purchased it. There are two separate front doors, two water bills, two sewer bills, two electric bills, and no interior connections. Mr. Meyer talked about the amount of money he paid over the years for the separate utilities. Mr. Madden and a Board member stated that financial considerations were irrelevant.

In response to questions from the Board, Mr. Meyer stated that he had an office on the top floor in the back of the house. There were times when the first floor was used as storage from the computer business on the first floor. He stated he didn't use it as a commercial facility; that he has another facility in another town. He didn't aggressively market it as a duplex either because he didn't want renters. There was a discussion about the Tax Assessor's 6/29/11 field card that contradicted the testimony. It states: *"First Floor used as office- 3 rooms and 3 fixtures. Kitchen removed"* and the references to kitchen sink, range/oven/ and laundry are crossed out. With regard to questions about the kitchen, Mr. Meyer stated that he removed the top section of the kitchen cabinets and installed them in the garage instead. In response to further questioning about the contents of the kitchen, he said the sink, stove, and bottom cabinets remained in the kitchen, but when there was a water leak, cabinets were pulled and replaced.

There was a discussion about whether there was an office on the first floor. The following excerpt from an August 13, 2007 letter drafted by Mr. Meyer was read into the record: *"... Working from home has afforded me the opportunity of*

*enjoying the area, while being able to save the long commute. I feel that I have been intimately involved with my community's pulse of the neighborhood working from home as I work all day in front of my first floor windows."*

Ms. Wuebker stated that the Tax Assessor's records and Mr. Meyer's letter indicate that the applicant has been using the property as a single family dwelling with an accessory home occupation on the first floor. From a zoning perspective, she considers the non-conforming use to be abandoned, given the 18 years or so of non-use as a duplex, and it being used as a single family dwelling with home occupation.

Mr. Meyer stated that he wrote the 2007 letter to the Police Department regarding some of the problems he was witnessing around his property. Mr. Meyer said he volunteered his time working on computers for the Borough, police department, and fire department on the first floor of the apartment sometimes, but his business is located in Millville. In response to questions from Board members about the first floor, he stated he thinks he had two four-foot tables on the first floor, but nothing else office-related was on the first floor. There was a discussion about the conflicting testimony and records.

Mr. Meyer asked to call Mr. Brennan as a witness to provide testimony, but Mr. Brennan was no longer in the room. Mr. Urrichio left the room to see if he could find Mr. Brennan, but he was not able to be located.

Mr. Uricchio inquired whether there are any rental registrations with the Borough for the property; Ms. Wuebker stated there are none. Mr. Meyer stated that he thinks the Borough's rental registration requirement is something that the Borough started to require about five years ago. Ms. Wuebker thinks it was longer than that b/c recently the Borough changed from requiring annual inspections to inspections every 3 years. There was a discussion that there are still two separate front doors and no internal connections between the two units.

There were no members of the public present. There was a discussion about whether neighbors have been notified. Ms. Wuebker confirmed that she reviewed the notice submission, which was satisfactory.

Mr. Lammey asked if the Board members had any more questions for the applicant. Mr. Licata, Mr. Fiume, and Mr. Lammey asked questions of the applicant, including whether he had one or two mortgages on the property, asked whether the first floor had been rented as office space to anyone else, whether there is any connectivity between the units, and utilities. Mr. Meyer stated he has one mortgage. He stated he did not rent the space for commercial purposes to anyone else. A Board member noted that the tax records indicated he purchased the property in 2001.

Mr. Madden recapped the question for the Board: did whatever activities take place constitute an abandonment of the duplex, i.e., did it constitute an intent to have a home occupation – i.e., to have an office, or was the office use just temporary in nature.

Mr. Lammey said it was his opinion that if someone purchases a duplex, but only uses the separate apartment as guest quarters, and there is no other overt actions to abandon the use, such as combining the electrical meters, or combining other utilities, then he doesn't think it is sufficient action to demonstrate an intent to abandon the use. Ms. Wuebker indicated that this will almost always be the case because it is expensive to combine them. Mr. Licata agreed with Mr. Lammey. He doesn't feel there is an intent to abandon the use. There are two separate front doors; no internal connections between the units and separate utilities. Mr. Uricchio said there was no renovations to reconfigure it into a single family dwelling.

Mr. Uricchio made a motion to issue a certificate of non-conforming use for the property as a duplex. Mr. Licata seconded the motion.

<b>Benjamin</b>	<b>Brennan</b>	<b>DeSimone</b>	<b>Fiume</b>	<b>Fitzgerald</b>	<b>Lammey</b>	<b>Licata</b>	<b>Stewart</b>	<b>Uricchio</b>	<b>Woods</b>	<b>Wuebker</b>
Yes			Yes		Yes	Yes	Abstain <sup>3</sup>	Yes		Abstain

Mr. Meyer thanked the Board and complained more about the process. There was discussion about the contents of Mr. Meyer’s 2007 letter. Mr. Lammey requested that the matter be closed, as the matter had already been voted on.

**5. ADJOURNMENT**

Mr. Fiume made a motion to adjourn the meeting that was seconded by Mr. Licata.

<b>Benjamin</b>	<b>Brennan</b>	<b>DeSimone</b>	<b>Fiume</b>	<b>Fitzgerald</b>	<b>Lammey</b>	<b>Licata</b>	<b>Stewart</b>	<b>Uricchio</b>	<b>Woods</b>	<b>Wuebker</b>
Yes			Yes		Yes	Yes	Yes	Yes		Yes

The meeting adjourned at approximately 9:00 pm.

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<sup>3</sup> Ms. Stewart was ineligible to vote as she missed a portion of the hearing.