

BRANT BEACH, NEW JERSEY
July 8, 2015

A Regular Public Meeting of the Land Use Board of the Township of Long Beach was held in the Multi-Purpose Room in the Administration Building, 6805 Long Beach Boulevard, Brant Beach, New Jersey on the above date.

The meeting was called to order at 7:00 P.M.

Mrs. C. K. Sicheri, Board Attorney, made the following announcement: “This is a regular meeting of the Long Beach Township Land Use Board, notice of which was posted on the Bulletin Board in the Municipal Clerk’s office and advertised in the Beach Haven Times and Asbury Park Press and filed with the Municipal Clerk on or before January 1, 2015 as required by the Open Public Meeting Act.”

Members of the Board present: **J. C. Konnor, E. J. Hummel as Mayor’s Designee, R. Pingaro, D. A. Southwick, R. S. VanBuren and Mrs. L. J. Schnell presiding.**

Members of the Board absent: **V. E. Applegate, Commissioner R.H. Bayard, J. A. Leonetti and Mayor J. H. Mancini.**

Alternate members of the Board present: **R. L. Jones and R. Andreotta.**

Alternate member of the Board absent: **P. M. Moran.**

Also present were the following: **Mrs. C. K. Sicheri, Esq., Board Attorney, Mrs. L. C. Krueger, Secretary for the Board/Commission and Mrs. Sharon L. Bongiovani, Clerk.**

* * * * *

(Tape #597 - Side 1)

Mrs. Sicheri gave a brief overview of the applications to be considered:

1. #LUB-32-15: ACOSTA (Block 18.61, Lot 1.02) 1061B Long Beach Boulevard, North Beach: Mrs. Sicheri stated that applicants were seeking bulk variance for rear yard setback so as to permit the addition of an elevator to be attached to the rear of the existing single family home.

2. #LUB-29-15: NIEDBALA (Block 8.10, Lot 8) 21 West Ryerson Lane, The Dunes: Mrs. Sicheri stated that applicants proposed to construct an addition to the existing single family home which required a bulk variance for front yard setback.

3. #LUB-30-15: GRISSONI (Block 18.08, Lot 4) 20 Sherwood Way, North Beach: Mrs. Sicheri stated the applicants proposed to demolish the existing detached garage and construct an addition to the existing single family home which required a bulk variance for rear yard setback.

4. #LUB-31-15: TSOUKAS (Block 15.51, Lot 2) 5809 Ocean Boulevard, Brant Beach: Mrs. Sicheri stated that the adjacent property owner was appealing the determination of the Zoning Officer granting a permit to build a single family home on the oceanfront lot. Mrs. Sicheri stated

that the Board needed to determine whether the appeal was filed in a timely manner and if so, whether the Zoning Officer was correct in issuing the permit based on the Township's Zoning Ordinance.

5. #LUB-21-15: LEONETTI (Block 5.03, Lot 3) Anderson Drive, North Beach Haven: Mrs. Sicheri stated that the Board had made a determination that a hardship existed and gave a conditional approval for the applicant to build a home on the undersized lot based on the condition that the adjacent property owners were not going to buy the property. Mrs. Sicheri noted that the adjacent property owners had made an offer substantial enough to warrant the Board determining the fair market value of the property, with all of the approvals.

* * * * *

Minutes of the meeting held June 10, 2015 were presented for approval. **Southwick** moved, seconded by **Hummel** for adoption. **Konnor, Hummel, Pingaro, Schnell, Southwick, VanBuren and Jones all voted YES.**

* * * * *

Mrs. Schnell listed the following **Resolutions of Memorialization:**

1. **#LUB-11-06-PFA(2): DADDY O** – Resolution of Approval moved by **Hummel**, seconded by **VanBuren** The following roll call vote was recorded: **Hummel, Pingaro and VanBuren** all voted **YES**.
2. **#LUB-24-15: GARRETT** – Resolution of Approval moved by **Jones**, seconded by **Hummel**. The following roll call vote was recorded: **Konnor, Hummel, Pingaro, Schnell, Southwick, VanBuren, and Jones** all voted **YES**.
3. **#LUB-25-15: SEEGERS** – Resolution of Approval moved by **Southwick**, seconded by **Pingaro**. The following roll call vote was recorded: **Konnor, Hummel, Pingaro, Schnell, Southwick, VanBuren and Jones** all voted **YES**.
4. **#LUB-26-15: DEMCSAK** – Resolution of Approval moved by **VanBuren**, seconded by **Southwick**. The following roll call vote was recorded: **Konnor, Hummel, Pingaro, Schnell, Southwick, VanBuren and Jones** all voted **YES**.
5. **#LUB-27-15: JONES** – Resolution of Approval moved by **Southwick**, seconded by **Konnor**. The following roll call vote was recorded: **Konnor, Hummel, Pingaro, Schnell, Southwick, VanBuren and Jones** all voted **YES**.
6. **#LUB-28-15: VIZZONE** – Resolution of Approval moved by **Hummel**, seconded by **Pingaro**. The following roll call vote was recorded: **Konnor, Hummel, Pingaro, Schnell, VanBuren and Jones** all voted **YES**.

* * * * *

Mrs. Schnell noted that there were five applications to be considered, as follows:

Mr. Pingaro stepped down from the Board for the following application:

(1) **#LUB-31-15** **BRANT BEACH**

ELIAS TSOUKAS

Applicant

DANIEL & KATHLEEN KAISER

Owners

Block 15.51, Lot 2

Mr. Nicholas Urciuoli of Connell Foley, L.L.P. represented the applicant and evidence was marked as follows: Application and Attachments, **#A-1**, Exhibit A – Zoning Permit dated February 6, 2015, **#A-2**, Exhibit B – CAFRA Permit dated December 19, 2014, **#A-3**, Map to accompany a CAFRA general permit application showing bulkhead removed prepared by Horn, Tyson & Yoder, Inc. dated February 1, 2013 with a revision date of November 14, 2014, **#A-4**, Exhibit C – Zoning permit dated April 23, 2014, **#A-5**, Exhibit D – CAFRA permit dated July 9, 2013, **#A-6**, Map to accompany a CAFRA general permit application prepared by Horn, Tyson & Yoder, Inc. dated February 1, 2013 with a revision date of June 25, 2013, **#A-7**, Exhibit E – Tax map, **#A-8**.

Mr. Stuart Snyder, Esquire represented the owners of the property, Mr. and Mrs. Daniel Kaiser and stated that he objected to the matter going forward. He stated that Mr. Urciuoli had noted that he had been provided information regarding the Zoning permit in connection with an OPRA request and within a twenty day period of receiving that information had filed the appeal. Mr. Snyder stated that it was his position that it still did not meet the twenty day requirement. He noted the twenty day period was from when one knew or should have known. He stated that Dr. Tsoukas had been involved with the overseeing of this project from the initial CAFRA process and knew or should have known long before the filing of the appeal of the February 6th issuance of the Zoning Permit.

Mr. Urciuoli explained the timeline of the appeal. He noted that there had been no development or construction of lot 2 and that there was nothing preventing the owners of lot 2 from building. He stated that the idea that the twenty days would have prejudiced the owners of lot 2 and that they had a right to rely on the twenty days was not applicable here. Mr. Urciuoli stated that he felt that they had met the twenty day requirement and that there had been no harm to the other side in terms of prejudice as they still have not built.

Mr. Snyder stated that there had been monthly correspondence from Mr. Tsoukas' counsel directly to the State of New Jersey regarding the permits, so the neighbor was aware of development proposed. Mr. Snyder stated that Mr. Kaiser was mandated to remove the structure from the lot due to damage from Super Storm Sandy.

Mr. Daniel B. Kaiser, owner of the subject property was sworn and testified that he had received an order from FEMA and the town to demolish the house in January, 2013. Mr. Kaiser stated that he had retained Craig Brearly, AIA to draw architectural plans and to help obtain the CAFRA permit. Mr. Snyder submitted a series of five letters regarding subject property, dated September 10, 2014 to January 28, 2015 sent by the applicant's attorney to CAFRA, marked **#O-1**. Mr. Snyder stated that he felt that the applicant should have known of the zoning permit based on his regular follow up with the subject property and could have complied closer to the twenty days

rather than the four months that passed.

Mr. Urciuoli stated that the start of the date was not when the permit was issued but when they found out about the issuance of the permit.

(Tape #597 – Side 2)

The Board felt that taking into consideration the applicant's involvement with the owner's CAFRA permit application that the appeal should have been filed in a timelier manner than eighty-three days after the issuance of the zoning permit. The Board noted that in fairness to the owner of the property, that after twenty days he should be able to rely on the fact that the permit is good and not have questions raised in excess of two months later. The Board pointed out that you don't necessarily need an OPRA request to get the information but that it could be obtained by going directly into the Township.

Hummel moved, seconded by Konnor to deny the request for an appeal based on the facts that the application was not submitted in a timely fashion and therefore the Board did not have jurisdiction to hear the appeal. The following roll call vote was recorded: **Konnor, Hummel, Schnell, Southwick, VanBuren, Jones and Andreotta all voted YES.**

* * * * *

(Tape #598 – Side 3)

Mr. Pingaro rejoined the Board.

(2) #LUB-29-15 THE DUNES

**THE RAYMOND S. NIEDBALA 2009 SPLIT PURCHASE
QUALIFIED PERSONAL RESIDENCE TRUST**

Owner and Applicant
Block 8.10, Lot 8

Mr. Richard Visotcky, Esquire, represented the applicant and evidence was marked as follows: Application and Attachments, **#A-1**, Variance Plan prepared by Nelke/Tyszka Land Surveyors, LLC dated March 2, 2015, **#A-2**, and seven page Architectural Drawings prepared by Jay Madden Architect dated April 29, 2015, **#A-3**. Mr. Visotcky stated that the applicants planned renovations to the existing home but that most of the renovations would be within the footprint of the home. Mr. Visotcky stated that a front yard setback variance was required for a second floor bump out on the front of the home. He noted that parking would not be affected by the proposal.

Mr. Jay Madden, Architect of Harvey Cedars, was sworn and testified that the goal was to add a bedroom to the home, on the second floor. He noted that the offset improved the look of the front of the house and functionally allowed for a bed and dresser in what would have been a very narrow bedroom. Mr. Visotcky submitted photographs of the property, marked **#A-4 and #A-5**. Mr. Madden described the photographs. Mr. Visotcky noted that the lot was uniquely shaped and that the application only pertained to the second floor.

Mr. William Brandsetter, III of 19 Ryerson Lane was sworn and stated that he had no

objection to the application.

The Public Session was closed.

Mr. Visotcky requested that the application be approved as submitted.

The Board noted that the request was minimal.

Southwick moved, seconded by Hummel to approve the application as submitted. The following roll call vote was recorded: **Konnor, Hummel, Pingaro, Schnell, Southwick, VanBuren, Jones and Andreotta** all voted **YES**.

* * * * *

(3) #LUB-30-15 NORTH BEACH

ROBERTA GRISSONI

Owner and Applicant

Block 18.08, Lot 4

Mr. Reginald Raban, Esquire, represented the applicant and evidence was marked as follows: Application and Attachments, **#A-1**, Variance Plan prepared by Horn, Tyson & Yoder, Inc. dated June 26, 2014, **#A-2**, Three page Architectural drawings prepared by Craig Brearley, AIA Architect dated November 18, 2014, **#A-3**.

Mr. James Brzozowski, P.E., P.P. with the firm of Horn, Tyson & Yoder, Inc. was sworn and submitted photographs, marked **#A-4 and #A-5**. Mr. Brzozowski described the existing property. Mr. Brzozowski stated that the applicant proposed to demolish the existing accessory structure and build a two story addition that would be connected to the home by decks, be slightly smaller than the existing garage and increase the rear yard setback. He noted that since it was proposed to attach the structure to the principal structure, the required rear yard setback would be twenty feet and 5.1 feet was proposed. He noted that a twenty foot wide access easement ran behind the proposed structure. Mr. Brzozowski stated that the applicant's son was legally blind and the reason for the placement of the addition was to give her son his own space and remain safe. He felt that the placement of the addition would not have an adverse effect on light air and open space.

Mr. Craig Brearley, Architect, was sworn and described the proposed architectural plans to the Board. Mr. Brearley stated that the existing location of the home and the pool generated the location of the proposed addition.

Mrs. Roberta Grissoni, Owner was sworn and testified that she wanted to create a separate living space for her son.

MaryAnn Schmid of 1010D Long Beach Boulevard stated that she was in support of the application.

The Public Session was closed.

Mr. Raban asked that the application be approved as submitted noting that the twenty foot access easement in the rear yard where the variance was required was unique and maintained open space. He stated that all other bulk requirements had been met.

(Tape #598 – Side 4)

While some members of the Board felt that since the easement ran behind the property, that the lot coverage was only being increased slightly and that the rear yard setback was being improved they would be in favor of the application. Other members felt that a better job could have been done attaching the structure directly to the existing home and that the rear yard setback could have been further improved if the size of the proposed structure were smaller.

Jones moved, seconded by Southwick to approve the application as submitted. The following roll call vote was recorded: **Southwick, VanBuren, Jones and Andreotta** all voted **YES. Konnor, Hummel, Pingaro and Schnell** all voted **NO. Mrs. Sicheri stated that the tied vote was a failure to pass and therefore a denial.**

* * * * *

(4) #LUB-32-15 NORTH BEACH

GUSTAVO & MARIA ACOSTA

Owners and Applicants

Block 18.61, Lot 1.02

Mr. Reginald Raban, Esquire, represented the applicants and evidence was marked as follows: Application and Attachments, **#A-1**, Variance Plan prepared by Nelke/Tyszka Land Surveyors, LLC dated May 22, 2015, **#A-2**, Three page Architectural drawings prepared by Musgnug & Associates dated May 28, 2015, **#A-3**. Mr. Raban stated that the applicants proposed an elevator in the rear of the property which would encroach a total of ten square feet.

Mr. Leon Tyszka, Surveyor was sworn and described the existing property. Mr. Tyszka noted that the proposed elevator would encroach into the rear yard setback by one foot, eleven inches and that no other bulk variances were required.

Mrs. Maria Acosta, Owner was sworn and testified that due to the floorplan of the home there was no other suitable location for the elevator. She described her home as a reverse living home and that the elevator was a necessity.

The Public Session was closed.

Mr. Raban requested that the application be approved as submitted.

The Board noted that there would not be any negative impact to the neighborhood.

Southwick moved, seconded by Hummel to approve the application as submitted. The following roll call vote was recorded: **Konnor, Hummel, Pingaro, Schnell, Southwick, VanBuren, Jones and Andreotta** all voted **YES.**

* * * * *

Mr. Southwick stepped down from the Board.

(Tape #599 – Side 5)

(6) #LUB-21-15 NORTH BEACH HAVEN

JAMES LEONETTI

Applicant

WATCHUNG DEVELOPMENT GROUP, LLC

Owner

Block 5.03, Lot 3

Mrs. Sicheri announced that the application was for a fair market value hearing with respect to the property at Block 5.03, Lot 3. Mrs. Sicheri stated that the bulk variances had already been granted conditioned upon the fair market value purchase price to be determined. The Board received the following evidence regarding the hearing: Letter to James Leonetti c/o Stuart D. Snyder, Esq. dated June 10, 2015, regarding proposed purchase offer, #O-1, Letter to Board from Stuart D. Snyder, Esq. dated June 10, 2015, regarding proposed offer, #A-9, Letter to adjacent owners, Bohnsack and Meunier from Stuart D. Snyder, Esq. dated June 30, 2015, regarding offer, #A-10, Report of Appraisal for Anderson Drive, prepared by Rich Higgins, SCRREA, dated February 26, 2015, #A-11, Letter to Stuart D. Snyder, Esq. from Stuart A. Platt, Esq., dated July 2, 2015 regarding copy of Contract for Sale, #O-2, Letter to Stuart A. Platt, Esq., dated July 8, 2015 regarding Agreement of Sale for Vacant Land between Watchung Development Group, LLC and James Leonetti, #A-12, and, Agreement of Sale for Vacant Land, #A-13.

Mr. Stuart D. Snyder, Esquire of Surf City, New Jersey represented the applicant, James Leonetti.

Mr. Stuart A. Platt, Esquire with the firm of Platt & Riso, P.C. in Stratford, New Jersey represented the adjacent property owners, the Bohnsacks and the Meuniers.

Mr. Curtis Dowell, Esquire of Brant Beach, New Jersey represented the Contract Seller, Watchung Development Group, LLC.

Mr. Snyder stated that he had received a letter of an offer to purchase of \$165,000.00 from the adjacent property owners for the subject property which had been forwarded to the Board. Mr. Snyder stated that in return, he had provided an appraisal prepared by Higgins Appraisal, dated February 26, 2015. Mr. Snyder stated that he had also provided The Contract of Purchase between Mr. Leonetti and Watchung Development Group to Mr. Platt, as well as the Board. Mr. Snyder stated that the fair market value of the property, as approved, would be that which was set forth in Mr. Higgins appraisal. Mr. Snyder noted that Mr. Leonetti had spent in excess of \$20,000.00 for the cost of obtaining approvals and that the property was made more valuable as a result of the approvals.

Mr. Platt stated that his client's position was to offer the seller the purchase price of \$200,000.00 as well as to reimburse the applicant for the cost of the application and obtaining approvals.

Mr. Rich Higgins, SCRREA, State Certified Real Estate Appraiser was sworn and qualified. Mr. Higgins stated that he had prepared the appraisal in regard to the subject property. Mr. Higgins stated that the appraisal was prepared as if the subject property was a legal, buildable

lot and that his opinion of the value of the property was \$310,000.00. Mr. Higgins described how he arrived at the appraisal figure. The Board discussed bay access with the Mr. Higgins. Mr. Higgins stated that if a boat could not be docked along the subject property it would lower the value. He felt that a \$25,000.00 reduction would be reasonable but that he would have to take a look at it.

Mr. Platt asked how Mr. Higgins arrived at the \$25,000.00 adjustment for a property that could not dock a boat and it was noted that it was determined from Mr. Higgin's evaluation and analysis.

(Tape #599 – Side 6)

Mr. Dowell stated that if the lot had been fully buildable and approved at the time of negotiation, Mr. Leonetti would not have been able to purchase the lot for \$200,000.00. He felt that the only evidence the Board had as to the value of the property was the appraisal that had been submitted.

Mr. Platt submitted a Comparative Market Analysis prepared by Joseph Sindulis of Weichert Co., Realtors in Ship Bottom, marked #O-3.

Mr. Snyder submitted tax assessments for four properties, marked #A-14.

Mr. James Leonetti, applicant was sworn and testified as to the four tax records submitted. Mr. Leonetti submitted a list of expenses incurred to submit the application, marked #A-15.

Mr. Dowell stated he felt that the Board was well within its purview to utilize the value on the appraisal submitted as the fair market value, based on a buildable lot with all the approvals. Mr. Dowell stated that if Mr. Leonetti had come to his client and the client had a buildable lot at that time, the price would not have been \$200,000.00.

Mr. Platt stated that assessments submitted were not indicative of fair market value and felt that the appraisal should be given little or no weight. Mr. Platt stated that the case was about the relief from the hardship. He noted that his clients were offering the purchase price plus reimbursement of costs associated with the application, which would relieve the property of the hardship and not provide a windfall to the developer.

Mr. Snyder pointed out that Mr. Higgins had stated his experience and had made adjustments based upon his experience as a licensed appraiser. Mr. Snyder stated before going forward with the application, neighbors on both sides of the subject property were given opportunities to acquire the property. Mr. Snyder stated that per the contract, in the event that the property was acquired by the adjacent property owners Mr. Leonetti would get his money back. Mr. Snyder stated that the windfall would go to the neighbor if they acquire a piece of property at less than what was determined as fair market value. Mr. Snyder requested that Board adopt the fair market value with all approvals as testified by Mr. Higgins. He noted that if the Board wanted to give a reduction for whether there was a use of the riparian that could be done. Mr. Snyder stated that the use of the riparian could not be restricted.

The Public Session was closed.

Mrs. Sicheri addressed the Board regarding the application.

(Tape #600 – Side 7)

Mrs. Sicheri discussed the application with the Board.

Mr. Pingaro and Mr. Andreotta stepped down from the Board during the Board's discussion as they were not present for the prior hearing regarding the property.

The Board felt that the Comparative Market Value did not carry any weight. The Board looked to the appraisal provided and felt that the testimony from the appraiser was credible. It was noted that the contract was entered into prior to any approvals obtained by Mr. Leonetti for developing the land.

Hummel moved to establish fair market value at \$310,000.00. The motion was withdrawn.

Konnor moved, seconded by Jones to establish the fair market value of the property at \$285, 000.00 taking into consideration the testimony from the appraiser. The following roll call vote was recorded: **Konnor, Hummel, Schnell, VanBuren and Jones all voted YES.**

Mrs. Sicheri noted that the adjacent property owners had until August 12, 2015 to present a written offer of the fair market value to the seller.

* * * * *

Mr. Pingaro, Mr. Southwick and Mr. Andreotta rejoined the Board.

Under **Correspondence**, the Board addressed a request from Reginald J. Raban, Esquire, for an extension of time on the **Troost Subdivision (LUB-40-15)**. Mr. Raban stated that as a condition of the resolution, the structures were to be demolished within 190 days. He stated that the applicants had been advised not to demolish the existing structure until there had been a determination on CAFRA permits. Mr. Raban stated that he felt that this was covered under the permit extension act but requested a formal extension.

Hummel moved, seconded by Konnor to grant the extension until June 30, 2016 or sooner for the removal of the structures. The following roll call vote was recorded: **Konnor, Hummel, Pingaro, Schnell, Southwick, VanBuren, Jones and Andreotta all voted YES.**

* * * * *

The Board approved the payment of the Board Attorney's bill and Board Engineer's bill.

* * * * *

The meeting was adjourned at 10:35 P.M.

LYNNE J. SCHNELL
CHAIRMAN

JEFFREY C. KONNOR
VICE CHAIRMAN