

BOARD OF ADJUSTMENT
CITY OF LAMBERTVILLE
RE-ORGANIZATION & REGULAR MEETING MINUTES
7:30 PM, JUSTICE CENTER, 25 SOUTH MAIN STREET
Thursday, February 24, 2011

The meeting was called to order by the Bill Shurts at 7:00 p.m. with a statement of compliance with the Open Public Meetings Act.

Roll Call

Mrs. Lawton called the roll as follows:

Present: J. Leyman, W. Seaman, F. Eisinger, G. Hambach, M. Fennessy, D. Moraski & K. Dunn

Absent: P. Mackey & P. Pittore.

Also Present: Bd. Attorney Bill Shurts & Bd. Planner Linda Weber

APPROVAL OF MINUTES

Georg Hambach made a motion to approve the December 2, 2010 meeting minutes as submitted. Bill Seaman seconded the motion. A unanimous voice vote in favor of the motion was taken by all members present.
MOTION CARRIED.

Ayes: J. Leyman, W. Seaman, F. Eisinger, G. Hambach, M. Fennessy, D. Moraski & K. Dunn
Nay:
Abstained:
Recused:

OATHS OF OFFICE

The following members were sworn in by Mr. Shurts: George Hambach, Maura Fennessy and Kate Dunn

ELECTION OF CHAIRPERSON

Motion to Open the Nomination for Chairperson:

Georg Hambach made a motion to open the nominations for Chairman for the Board of Adjustment. Bill Seaman seconded the motion.

Motion to Nominate Chairperson:

John Leyman made a motion to nominate Dave Moraski for Chairperson for the Board of Adjustment for 2011. Fred Eisinger seconded the motion.

ELECTION OF VICE CHAIRPERSON

Motion to Open the Nominations for Vice Chairperson

Georg Hambach made a motion to open the nominations Vice Chairperson for the Board of Adjustment. Bill Seaman seconded the motion.

Motion to Nominate Vice Chairperson

John Leyman made a motion nominate Pat Pittore for Vice Chairperson for the Board of Adjustment for 2011. Maura Fennessy seconded the motion.

ELECTION OF BOARD SECRETARY

Motion to Open Nominations for Board Secretary

John Leyman made a motion to open the nominations for Board Secretary for the Board of Adjustment. Maura Fennessy seconded the motion.

Motion to Nominate Board Secretary

John Leyman made a motion to nominate Crystal Lawton for Board Secretary for the Board of Adjustment for the year of 2011. Maura Fennessy seconded the motion.

APPROVAL OF RESOLUTION # 3-2010

Richard & Mary Freedman, 111 North Union Street Block 1020 Lot 3

Georg Hambach made a motion to approve the resolution as submitted to the Board. Fred Eisinger seconded the motion. A unanimous roll call vote in favor of the motion was taken by all members present.
MOTION CARRIED.

LAMBERTVILLE BOARD OF ADJUSTMENT
RESOLUTION NO. 3-2010
RICHARD A. and MARY FREEDMAN
CONDITIONAL USE APPROVAL, CONDITIONAL USE VARIANCE
AND SITE PLAN WAIVER
BLOCK 1020, LOT 3

WHEREAS, Richard A and Mary Freedman have filed an application with the Lambertville Board of Adjustment requesting conditional use approval for a market rate apartment, variances from specific conditions of a conditional use, and a waiver of the formal site plan requirement for the property known as Block 1020, Lot 3 in the R-2 (Residential) zone; and

WHEREAS, the application has been the subject of a public hearing before the Lambertville Board of Adjustment on December 2, 2010, at which time the applicants were represented by Richard Mongelli, Esq. and Mary Freedman, one of the applicants; Brad Sanford, a real estate broker and sales person; and Michael Burns, the applicant's architect and planner, all appeared and gave testimony under oath; and

WHEREAS, surrounding property owners were given notice of the hearing and had the opportunity to participate in the public hearing; and

WHEREAS, all procedural requirements of the applicable state statute and local zoning ordinance have been met; and

WHEREAS, the Board of Adjustment makes the following findings of fact and conclusions of law:

1. The existing conditions on the subject property are shown on a series of three architectural drawings which were prepared by Michael Burns, AIA. and were

marked as Exhibit A-4 at the public hearing. All three of the drawings are dated October 25, 2010. The first sheet is entitled "Existing Ground Floor Plan"; the second sheet is entitled "Existing Second Floor Plan"; and the third sheet is entitled "Existing Third Floor Plan".

2. The applicant also submitted a series of four drawings prepared by Michael Burns, AIA showing the current site plan and the proposed changes to the premises. The first sheet is entitled "Existing Site Plan Zoning Schedule." The second sheet is entitled "Proposed Ground Level Plan. The third sheet is entitled "Proposed Second Level Plan." The fourth sheet is entitled "Proposed Third Level Plan."
3. Exhibit A-4 shows the conditions which exist in the structure at the present time, a combination of the Bed & Breakfast use and the Freedman residence. The green areas shown on Exhibit A-4 are the areas presently used for the Bed & Breakfast and the lighter tan areas are currently the single family residence.
4. At the present time, the front portion of the first floor shown on Sheet 1 of 3 of Exhibit A-4 shows a living room, library, dining room and entryway which are public space. The kitchen area on the first floor is shared by the Freedmans and individuals occupying the guest rooms for the Bed & Breakfast. The rear portion of the first floor is used exclusively as the current Freedman residence.
5. At the present time, there are two entrances. The main entrance on the North Union Street side of the property is used by Bed & Breakfast customers during business hours. At other times, guests are able to enter the building by using the entry door on the Jefferson Street side which has a keypad and allows guests to come and go at all times without disturbing the Freedmans. The Freedmans can use either entrance at any time as desired.
6. Sheet 2 of 3 of Exhibit A-4 shows the four guest rooms which are available on the second floor. The Freedmans use the existing office and existing laundry at the rear of the second floor for their own purposes as well as for the Bed & Breakfast facility. No portion of the second floor is used by the Freedmans for residential purposes exclusively.
7. Sheet 3 of 3 of Exhibit A-4 shows the two guest rooms which presently occupy the entire third floor areas.
8. Two of the units on the second floor and one of the units on the third floor are actually suites which have a guest sitting room as well as a guest bedroom and a bath. The remaining three units on the second and third floor consist of a guest bedroom and a bath.
9. Sheet 1 of 4 on Exhibit A-5 shows the existing site plan. This plan was approved after significant review by the Board of Adjustment approximately 10 years ago. The drawing shows that there are six parking spaces, four of which are angled spaces on the west side of the dwelling and two are spaces located in the existing garage at the northwest corner of the property.
10. It was determined at the time of the earlier hearings that the six parking spaces would be sufficient for the proposed uses on the property. As noted, they consisted of a maximum of six guest rooms and the Freedman's residence. There has been no evidence of any problems due to a lack of parking since the Bed & Breakfast facility began operating in 2002.
11. The applicant intends to give up the Bed & Breakfast use and to convert the property to a single family residence for the Freedmans along with one large market rate apartment.
12. If the project is approved, the building will be used in the manner shown on sheets 2 through 4 of Exhibit A-5.
13. The proposed first floor area and its proposed use is shown on sheet 2 of 4. All of the areas shown in tan will be used as part of the Freedman's residence. The portion of each floor shown in the darker reddish-brown color will be part of the accessory apartment. The only portion of the first floor which will be used by the tenant, will be the Jefferson Street entrance which will continue to have a keypad. It will be the exclusive entrance for the tenant. There will be a locked door between the entryway used by the tenant and the remaining area on the first floor which will be used exclusively by the Freedmans.
14. The second floor layout is shown on sheet 3 of 4. Only the area at the rear of the property will be used by the Freedmans as shown on the drawing. The larger area at the front will be the main portion of the apartment which will include a kitchen, a new living room and dining room and existing office and bath. The only interior structural change will be the inclusion of a wall along the existing hallway which will segregate the apartment from the rear area to be used by the Freedmans.
15. The third floor area is shown on sheet 4 of 4 of Exhibit A-5. That entire area will be used by the tenant of the apartment. It includes an existing bedroom, a sitting room, an additional bedroom and two baths. A laundry area is shown on this area but it may be relocated to the tenant's area on the second floor.

16. Prior to the public hearing, at the Board's meeting on October 28, 2010, the Board voted to waive the submission of a formal site plan as is otherwise required by Section 517.2 of the local ordinance. The applicant had initially submitted the proposed plans as well as the existing layout drawings. At that point, the Board determined that the information which was submitted along with the information in the Freedmans' prior file contained more than sufficient information for the Board to make an informed decision regarding this application.
17. The applicants are the owners of the property known as Block 1020, Lot 3 which is located at 111 North Union Street in Lambertville. The subject property is located on the northwest corner of the intersection of North Union Street and Jefferson Street in the R-2 (Downtown Residential) zone.
18. The subject property is developed with a 2% story federal style house which was built approximately in 1864. The building contains approximately 5,500 square feet.
19. The applicants now intend to convert the building from a six room Bed & Breakfast facility and single family residence to a single family residence on the first floor and rear of the second floor with one large apartment on the front portion of the second floor and the entire third floor.
20. The subject property has been known locally for many years as the Martin Coryell House and the applicants kept that name for their Bed & Breakfast project.
21. The Bed & Breakfast facility was approved as a conditional use during 2001 and has been used for that purpose since the facilities were completed and opened for business during 2002.
22. Mrs. Freedman testified that the current economic conditions have killed the Bed & Breakfast project as a continued viable use for the property. The building is too large to be used only as a single family residence. The applicants have determined that a single large apartment could generate sufficient income to allow them to continue to maintain the building.
23. Mrs. Freedman stated that there were very few large apartments in Lambertville. This apartment will have almost the same square footage as their residence. The applicants propose no changes to the outside of the house and only minor changes to the interior. There will be no remaining Bed & Breakfast activity if this project is approved. The interior areas will be changed to provide for one single family residence with a large apartment.
24. Brad Stanford, a real estate broker and sales person currently employed by Weidel Realtors in Lambertville, stated that he had familiarity with the real estate market in Lambertville. He testified that it was very unusual to find an apartment of this size. Normally, this amount of living space can only be found in a single family detached residence or a duplex. Also, buying or renting that much living space normally entails a maintenance responsibility.
25. Mr. Stanford testified that there is a demand for this type of unit. People who cannot qualify for mortgages and empty nesters might find it very attractive. The apartment unit will be slightly over 2,000 square feet. He anticipates that it would probably rent for approximately \$2,000.
26. Michael Burns, the applicant's architect and planner, testified that there would be no changes to the building footprint or to the parking arrangement. He determined that four off street parking spaces would be required for the combination of proposed uses. At the present, there are six spaces on the site so there should not be any problem with sufficient on-site parking.
27. Mr. Burns testified that the only change to existing Sheet 1 on Exhibit A-5 would be the removal of the sign advertising a Bed & Breakfast facility.
28. Mr. Burns testified that a new kitchen will be installed for the apartment. Some interior walls will be taken down to provide larger living areas in the apartment. There will be no areas common to both uses.
29. Mr. Burns stated that sealed architectural drawings will be prepared and then given to the code official prior to the start of construction. It will be a condition of any approval that the sealed architectural drawings will mirror the plans submitted to the Board for approval to the extent possible.
30. The apartment will have direct access to the outside and to the rear of the building, as noted. There is a fire escape at the rear of the building which is not visible from the street.
31. The only apartment use which is allowed in the R-2 zone is an accessory "Affordable" apartment for low or moderate income tenants. A number of COAH type guidelines are part of the standards for such apartments as set forth in the Lambertville Ordinance.
32. There was some discussion among the professionals when the application was submitted as to whether or not the variance relief which was being requested related to the allowed conditional use and specific conditions of that

conditional use or if a market rate unit was simply a separate use and required relief pursuant to *N.J.S.A. 40:55D-70(d)(1)*. Ultimately, it was determined that an apartment is an apartment regardless of who lives in it and that the relief in question constituted variance relief from the specific conditions of this conditional use.

33. Section 404.48 of the local ordinance enumerates seven separate conditions for an accessory apartment. A number of those conditions involve provisions for low and moderate income units. The applicant is asking for relief from each and every one of these conditions. The sections which deal with low and moderate income household requirements are Section 404.48(1), 404.48(2), 404.48(3) and 404.48(4).

34. There is general conformity with Section 404.48(6) as this two bedroom apartment is well in excess of 750 square feet. However, Subsection (d) provides that no accessory apartment shall exceed 900 square feet in area. This proposed two bedroom unit will be approximately 2,200 square feet and apparently requires variance relief for that reason. As noted below, this building is not really suitable for a true accessory apartment which is usually a relatively small dwelling unit. This proposed unit is approximately 2,200 square feet and has as much floor area as many residences in the area.

35. The proposed apartment complies with the other requirements set forth in the ordinance. Section 404.48(5) allows accessory apartments within single family detached dwellings and provides only one such apartment per lot shall be permitted. This proposal complies with that requirement.

36. Section 404.4B(7) provides that each accessory apartment shall have direct access to the side or rear exterior of the building. As noted, the accessory apartment has direct access to the door on the Jefferson Street (south) side of the building and there is also a fire escape on that side of the building which provides another means of egress from the building for the second and third floor residence.

37. The local ordinance allows only one low or moderate cost unit on a site in the R-2 zone. The Martin Coryell House is not an appropriate site for this type of unit. It is an extremely large building on a City block in Lambertville which has only four primary structures located thereon.

38. Because of its size and location and the availability of off street parking, this property is one of the few sites in the City of Lambertville which is appropriate for the type of use which is being proposed. The existing structure if laid out in such a way that the building can be divided into the two proposed uses while still maintaining its structural and historical significance.

39. All of the foregoing circumstances constitute special reasons for considering approval of the project.

40. The leading case in New Jersey dealing with the standard of proof for a variance from a specific condition of a conditional use is *Coventry Square vs. Westwood Zoning Board of Adjustment*, 138 N.J. 285 (1994.)

41. In that case, the Court held that the proof of special reasons that must be produced by an applicant for such a variance must be proof sufficient to satisfy the Board of Adjustment that the site proposed for the conditional use, in the context of the applicant's proposed site plan, continues to be an appropriate site for the conditional use notwithstanding the deviations for one or more conditions imposed by the ordinance. Accordingly, a conditional use variance applicant must show that the site will accommodate the problems associated with the use even though the proposal does not comply with the conditions established in the ordinance to address such problems.

42. There are no negative impacts which will be caused by allowing the proposed use of the facilities. The use of the property as a single family residence and one apartment is a less intense use than the Bed & Breakfast. While an apartment has certain commercial aspects, it is a residential living unit and the area where the property is located is one which is intended for residential uses.

43. For the reasons discussed in the body of this resolution, this applicant has satisfied both the positive and the negative criteria for granting the variance. The Board finds that the requested relief can be granted without causing substantial detriment to the public good and without impairing the intent and purpose of the zone plan for the reasons already discussed herein. The Board will grant the variance relief requested by this applicant.

44. The City Planner prepared a report dealing with this application which report is dated October 26, 2010. All the issues raised in the Planner's report have been addressed to the satisfaction of the Board.

NOW, THEREFORE, BE IT RESOLVED by the Lambertville Board of Adjustment, City of Lambertville, County of Hunterdon, State of New Jersey, that the applicant's request for a variance from Sections 404.4B(1), 404.4B(2), 404.4B(3), 404.4B(4) and 404.4B(6)(d) of the accessory apartment standards of the ordinance is hereby granted for the reasons set forth above with the understanding that said variance relief applies only to this particular plan and the particular use which is the

Subject of this application; the variance relief granted herein is contingent upon compliance with all terms and conditions of the construction official; and **BE IT FURTHER RESOLVED** that the conditional use (accessory apartment) is hereby approved; and

BE IT FURTHER RESOLVED that the applicant's request for a site plan waiver is hereby granted, subject to the following conditions:

1. Prior to the issuance of construction permits for the improvements which are part of the project, the applicant shall provide one copy of the approved construction plans to the Board Secretary to be included in the file.
2. Prior to the issuance of a certificate of occupancy for this project, the applicant will comply with all requirements of the construction official. Any minor deviation from the approved plans required by the construction official which do not increase any degree of non-conformity will not require a further appearance before this Board.
3. The applicant's continued compliance with all requirements applicable to this conditional use which are subject to the variance shall be a continuing condition of this approval and the continuing use of the facility for the purposes approved herein.
4. No construction permits shall be issued unless municipal taxes for the subject property are current and all fees escrows associated with this application are current and have been paid to the City of Lambertville.
5. Neither the Board nor its employees will perform any services in furtherance of this approval if there is a deficiency in any escrow or inspection fee account. The applicant will have a continuing duty to maintain a positive balance in all accounts until all conditions have been satisfied and all charges have been paid.

DAVID MORASKI, CHAIRMAN
 ATTEST:
 CRYSTALLAWTON, SECRETARY
 ROLL CALL VOTE
 THOSE IN FAVOR: _
 THOSE OPPOSED: _
 Date Memorialized: _

APPROVAL OF RESOLUTION # 4-2010

Michael Strober, 16-18 South Franklin Street Block 1073 Lot 23

Bill Seaman made a motion to approve the resolution as submitted to the Board. Maura Fennessy seconded the motion. A unanimous roll call vote in favor of the motion was taken by all members present.
MOTION CARRIED.

**LAMBERTVILLE BOARD OF ADJUSTMENT
 RESOLUTION NO. 4-2010
 MICHAEL STROBER
 VARIANCE FOR INTENSIFICATION OF NON-FORMING USE,
 OFF STREET LOADING VARIANCE, R.S.I.S. WAIVERS
 and SITE PLAN WAIVER
 BLOCK 1073, LOT 23**

WHEREAS, Michael Strober has filed an application with the Lambertville Board of Adjustment which will allow him to convert the second floor of an existing building from a three bedroom apartment to two one bedroom apartments on property owned by the applicant and known as Block 1073, Lot 23 and designated as 16-18 South Franklin Street in the C-2 Highway/Commercial (C-2) zone; and

WHEREAS, the applicant's proposal requires several variances, including a variance to expand a non-conforming use, as well as site plan review; and

WHEREAS, the applicant has filed the proper application, paid all fees and has sent out notices as required by state statute and local ordinance and has complied with all other jurisdictional requirements; and

WHEREAS, this application was declared complete at the Board's October 28, 2011 meeting and the Board also waived the requirement for submission of a formal site plan at that same meeting; and

WHEREAS, this application has been the subject of a public hearing before the Lambertville Board of Adjustment on December 2, 2010, at which time the applicant was represented by Donald F. Scholl, Jr., Esq. and testimony was given by Michael Strober, the applicant, and Michael Burns, A.I.A., the applicant's architect and planner;

and

WHEREAS, the Lambertville Board of Adjustment makes the following findings of fact and conclusions of law:

1. The following exhibits were marked on behalf of the applicant at the time of the hearing:

A-1

A-2

2. The applicant also submitted two drawings prepared by Michael Burns, Architect. The drawings consist of two sheets, both dated September 17, 2010. Sheet 1 of 2 is entitled "Existing Site Plan and Zoning Schedule"; Sheet 2 of 2 is entitled "Existing Plan".

3. The subject property is already developed. It contains a principal building which is a three story structure containing mixed uses and a second two story frame building used as a one bedroom apartment. There is a paved parking area in the southwest portion of the subject property.

4. The subject property is located on the east side of New Jersey Route 165 in the C-2 zone.

5. The primary building on the site has a mixture of commercial and residential uses. At the present time, there is an optometrist occupying the first floor. There is a three bedroom apartment on the second floor and a two bedroom unit on the third floor.

6. The second structure on the subject property is a two story frame dwelling near the southerly boundary of the property. This building is used for one apartment. It has a living room and kitchen on the first floor and a bath and a bedroom on the second floor.

7. The record does not indicate when or how the existing combination of uses came to be established upon the subject property. The applicant testified that this combination of uses has existed since 1985 when he bought the property. There is no evidence which demonstrates that any of these uses were established illegally. The commercial use is a permitted use and the residential units must be considered to be pre-existing non-conforming uses. Since this combination of uses has existed on this site with only four on site parking spaces for more than 25 years, the parking requirement for these uses, although deficient under current standards, is "grandfathered" and may remain without change as long as the combination of uses remains unchanged.

8. The optometrist's office is a permitted use on the C-2 zone. The tenant's hours vary but generally run from 12:00 noon to 6:00 p.m. with one evening set aside for regular office hours.

9. The first floor of the primary structure has been used for commercial purposes for many years. There have been numerous other commercial uses on the subject property since the structure was built. At various times, the first floor was used as a doctor's office, a real estate office and a video store.

10. Mr. Strober has no intention of changing the use of the first floor or the third floor of the primary building. Similarly, no changes are proposed for the two story frame dwelling near the southerly border of the subject property.

11. The change which is proposed by the applicant is for the second floor of the primary structure. At present, the entire second floor is used for a three bedroom apartment. Mr. Strober proposes to make minimal changes to the current floor plan to create new additional wall construction by blocking off two existing door openings which presently connect the northerly and southerly portions of the second floor. By blocking off the door areas, the applicant will be able to create two separate apartments.

Apartment #1, the more northerly of the two apartments, will have 922.8 square feet. The second or southerly unit will have a total of 561.34 square feet.

12. The applicant wishes to change the layout of the second floor because of problems which he has had with the three bedroom apartment unit. He has found that it has been very difficult to regulate the number of people living in the apartment. There have at time been more people living at the premises than are permitted by the lease, and there has been damage to the subject property done by some of the residents of that unit.

13. The primary concern regarding the relief requested by this applicant involves parking. There are only four off street parking spaces on this property. At present, the requirements for off street parking for this property are as follows: 5 spaces are required for the first floor commercial use; 2.1 spaces are required for the second floor three bedroom apartment; and 2 spaces are required for the third floor apartment. The smaller building on the site requires 1.8 parking spaces. The parking standard for the apartments is found in the R.S.I.S. The commercial standard is found in the local ordinance. The required on site spaces total 10.9 (rounded up to 11).

14. If the changes requested by the applicant are approved, the requirement

of five (5) parking spaces for the first floor commercial area and two (2) parking spaces for the third floor apartment in the main building and 1.8 parking spaces for the second building remain unchanged. There will be, however, a total requirement for 3.6 on site parking spaces for the two one bedroom apartments on the second floor. The parking requirement for the revised plan is 12.4 spaces (which is rounded up to 13) on site parking spaces. Accordingly, there is a requirement for two more on street parking spaces. Since the applicant is unable to provide any additional off street parking, a waiver from R.S.I.S. Section 5:21-4.14(b) is for the two additional on site parking spaces.

15. The property immediately to the north of the subject property is the site of a restaurant with a relatively large parking area. The restaurant is known as Nicolla's Pizza. Mr. Strober testified that there is no agreement regarding the use of the commercial parking lot on the adjacent property, by any of his tenants. In response to an inquiry from a Board Member, Mr. Strober stated that he had no knowledge of any problems with his tenants using the pizzeria's parking lot in the past.

16. It should be noted that Mr. Maltese, the owner of the pizzeria, attended the applicant's completeness hearing on October 28, 2010. The Board attorney specifically advised Mr. Maltese that the actual hearing on the merits of this application would be held on December 2, 2010. Mr. Strober testified that he discussed his application with Mr. Maltese after the October 28, 2010 hearing and that Mr. Maltese was in favor of the application. Mr. Maltese did not attend the December 2, 2010 hearing.

17. The witness testified that his tenants are not allowed to use the four on site parking spaces during those hours when the optometrist is open for business. Mr. Strober stated that the individuals who are his residential tenants normally are at work during the time that the commercial use is open for business. There are also parking spaces on the east side of Route 165 immediately to the south of the subject property. Mr. Strober also testified that his tenants may also park in the library parking lot after 6:00 p.m. in the evening.

18. There was concern expressed regarding the layout of the four on site parking spaces.

Because of the physical features of the property, traffic maneuvers on the lot are somewhat limited and it is not an easy lot to exit. Mr. Burns testified that individuals using the three most northerly parking spaces have the ability to back out and to use the area behind the parking spaces to maneuver their vehicles and get them pointing in a northerly direction. They can then exit the parking lot without first backing out onto the right of way portion of Route 165.

19. The most southerly of the four spaces cannot easily exit the site without backing out into the right of way of Route 165. As noted, however, the easterly portion of Route 165 south of this site is available for on street parking. An individual using this parking space is not at risk of being hit by northbound traffic on Route 165 because the driver can get turned around without backing into the actual traveled portion of Route 165.

20. There is no feasible way to improve the parking arrangement on the site or to add additional on site parking.

21. The witnesses testified that four (4) 10' x 18' parking spaces could be delineated in this existing lot. None of the spaces have been specifically delineated, however.

22. Mr. Strober testified that he is able to make all regular traffic movements in the parking lot with his full sized pickup truck. The applicant's attorney stated that Mr. Strober relied only on his own testimony as to traffic movements and did not provide any type of turning template for review by the Board and its professionals. All parties agreed that what is being proposed will not impact how the existing parking area functions since no changes are proposed.

23. It should be noted that the aisle width space requirement for a parking lot of this type under the Residential Site Improvement Standards (R.S.I.S.) Section 5:214.16c is 24'. Currently, the backup area encroaches on to Route 165 slightly. Despite the deficiency, however, the testimony and experience of the applicant indicate that only an individual in the southernmost parking space must back onto the right of way of Route 165 in order to maneuver his car so it may proceed in a northerly direction on Route 165.

24. The City Planner asked how the parking restriction against the residential users is enforced during business hours. Mr. Strober stated that his tenant, the optometrist, has been advised to have any cars parked in the parking lot during business hours towed away if such vehicle is not driven by one of his patients.

25. The City Planner stated that she would like to have seen a parking analysis as part of this proposal. The applicant's attorney stated that no one from the public was in the audience and that should have some impact on the Board's decision.

He stated that if the neighbors did have issues with the proposal, particularly with respect to parking, they would have attended the public hearing.

26. It should also be noted that Ordinance Section 407.8 requires off street loading for a commercial use. Both the applicant and Mr. Burns testified that the optometrist had no need of a loading zone. The limited deliveries made to the optometrist are done by FedEx trucks. They pull in, generally parking in back of the parked vehicles, deliver any materials and leave the site without ever disturbing the parked vehicles.

27. Mr. Burns also testified that there would be no improvements made to the exterior of the building or to the grounds. All proposed changes are interior changes on the second floor of the main building which changes must be approved by the construction official.

28. The only renovation needed to divide the three bedroom apartment into two units is to block up two existing doors as noted above. There will be separate entrances and separate kitchen facilities for each second floor unit.

29. Both the applicant and Mr. Burns testified that there will likely be a reduction in the number of individuals using the two one bedroom apartments when the three bedroom unit no longer exists.

30. Mr. Burns stated that, under local Ordinance #2010-23 entitled "Rental of Housing Units", up to fourteen people could live in the existing three bedroom apartment. He did not provide a specific analysis of how he arrived at that number of possible tenants. Ordinance #2010-23 limits the maximum number of persons who may inhabit a dwelling unit based upon the square footage of each room occupied for sleeping purposes. By reducing the total number of bedrooms from three to two, the witness contends there is likely to be a reduction of the total number of tenants.

31. Mr. Burns also testified that it is likely that the one bedroom units will be occupied by individuals with partners, couples without children and single people. He concluded that the proposed change would further several Master Plan goals. One, it will help to preserve the historic integrity of this property. Two, it would facilitate access to a variety of housing types for present and future residents of the city. Three, it would provide greater diversity of the types of commercial and residential units available to individuals who wish to either work or live in the City of Lambertville.

32. The City Planner questioned whether or not it was appropriate or valid to use Ordinance #2010-13 to demonstrate that reducing the total number of bedrooms on the second floor from three to two produces a likelihood that there will be less individuals residing in the two new units than there are or may be in the existing three bedroom unit. The Board listened to the testimony and evaluated it on its merits.

33. Despite the fact that there is no physical expansion of the property, the change from one apartment on the second floor of the main building to two separate apartments constitutes an expansion of a non-conforming use. As noted above, residential units, including apartments, are not a permitted use in the C-2 zone. Two apartments is considered an intensification of the prior non-conforming use of a one three bedroom apartment.

34. The applicant's witnesses had testified that there are special reasons which justify the grant of the variance. Initially, both the applicant and Mr. Burns testified that the intensification of the expansion of the non-conforming use is more technical than real. Mr. Strober stated that it has been his experience that it is very difficult to regulate the number of people who reside in the three bedroom apartment at anyone time. Because additional persons beyond the approved tenants have lived at the property, it has been difficult to have any knowledge of how many people are residing at the unit at anyone time and to keep such individuals from doing damage to the premises.

35. The applicant's witnesses testified there will be less of an impact in terms of individuals coming and going on the site by having two one bedroom apartments instead of one three bedroom apartment. Their conclusion was not controverted by any member of the public or by the Board itself. Several Board Members commented that having two smaller apartments might very well act as a control upon the number of people who will be residing on the second floor of the building.

36. The subject property is located in a commercial zone and the first floor of the property has always been used for commercial purposes. Since a commercial use often is compatible with residential use of the upper floors in this type of building, the proposed use of the building can be expected to function reasonably well since there have been no complaints regarding his tenants reported to Mr. Strober.

37. The applicant also requires relief from Section 5:21-4.14 (b) of the R.S.I.S. as to the minimum number of off street parking spaces. The analysis of the parking above indicates that the applicant presently requires 11 on site spaces and will in the future require 13 on site spaces pursuant to ordinance. As discussed above, the applicant has only four off street spaces. As noted, the present uses which generate

the need for 11 parking spaces are "grandfathered" and may continue in perpetuity. The change from one apartment on the second floor to two apartments, however, requires an additional two (2) parking spaces and therefore requires R.S.I.S. relief. 38. In the same fashion, Section 407.8 provides for a required off street loading space on the site. The applicant cannot provide one. The Board has accepted the applicant's testimony on all of the items related to loading relief.

39. The building in question is suitable only for commercial purposes on the lower level and for residential use at the upper levels. The second building on the site has always been used for residential purposes. The proposed new uses may arguably produce less activity than presently exists on the subject property because of the pattern of use of the three bedroom apartment which presently exists on the second floor of the main building.

40. The suitability of the property for the proposed combination of uses, the nature of the improvements proposed to the property, the history of its use constitute special reasons to grant the variance to expand the non-conforming use which has been requested. The Board specifically finds that the premises in question is appropriate for this proposed use.

41. The Board finds that the variance relief which is being requested may be granted without causing any substantial detriment to the public good and without impairing the intent and purpose of the zone plan and the zoning ordinances. The building in question can realistically be used only for the types of uses presently located on the site.

42. The Board is satisfied that the variance for intensifying the nonconforming use should be granted for the reasons stated above. The use appears to be a reasonable one for this portion of the property without adding significantly to the traffic problem which already exists in the area.

43. Other than the first floor of the principal structure on the subject property, the balance of the structures cannot reasonably be adapted for any permitted use. The proposed use should not negatively impact the surrounding areas nor should it significantly impair the intent and purpose of the zone plan or the zoning ordinance. The subject property is a very difficult one for development because of the nature of the existing improvements. The commercial use is not a high volume use which would further exacerbate the existing parking problem.

44. Because of the type of uses which exist on the site, there is no real need for an off street loading area. Commercial uses have been in place, some at a higher intensity, for many years and there has not been any indication for the need of an off street loading area. It should be noted that it would not be possible to create such an area under any circumstances but this specific use has no actual need for same. Accordingly, the Board is willing to grant a variance from that particular ordinance requirement.

45. There are no real site plan issues before the Board and, for that reason, the Board is willing to waive the submission of a formal site plan. The Board will require that the actual changes to the site on the second floor of the main building will generally be as shown on the drawings submitted by Mr. Burns. Any changes required by the construction official which does not materially change the proposal for the two one bedroom apartments will not require an additional appearance before this Board.

46. The City Planner submitted a written report dated October 26, 2010 regarding this application. The Board discussed the issues raised by the report at the public hearing and, to the extent possible, resolved them.

47. Since there are no changes proposed to the footprint of the building and no exterior improvements to either building, the Board is willing to waive the submission of a formal site plan by this applicant. The applicant will be required to provide this Board with a copy of the construction plans approved by the local construction official.

NOW, THEREFORE, BE IT RESOLVED by the Lambertville Board of Adjustment, County of Hunterdon, State of New Jersey, that the application of Michael Strober for a variance pursuant to N.J.S.A. 40:55D-70(c)(2) to allow him to modify the three bedroom apartment located on the second floor of the main structure to create two one bedroom units is hereby approved for the reasons stated above; and **BE IT FURTHER RESOLVED** that the applicant's request for a variance from the off street loading area requirement is also approved for the reasons set forth in the body of this resolution; and

BE IT FURTHER RESOLVED that the applicant's request for relief from R.S.I.S. Section 5:21-4.14(b) as to off street parking requirements is also approved for the reasons set forth above which include the availability of parking along the east side of Route 165 and the partial availability of the library lot; and

BE IT FURTHER RESOLVED that a *de minimus* exception from R.S.I.S. Section 5:21-4.16c for the aisle width of the on site parking area is hereby granted for the reasons set forth above; and

BE IT FURTHER RESOLVED that the applicant's request for a waiver of the formal site plan submission was previously granted for the reasons set forth in the body of this resolution and subject to the following conditions:

1. The applicant will submit a copy of the approved construction plans for the changes to the second floor of the main structure prior to the issuance of a construction permit for same.
2. Neither the Board nor its employees will perform any services in furtherance of this approval if there is a deficiency in any escrow or inspection fee account. The applicant will have a continuing duty to maintain a positive balance in all accounts until all conditions have been satisfied and all charges have been paid.

PAT PITIORE, VICE-CHAIRMAN

ATTEST:

CRYSTALLAWTON, SECRETARY

ROLL CALL VOTE

THOSE IN FAVOR: _

THOSE OPPOSED: _

Date Memorialized: _

NEW BUSINESS

241 South Franklin Street, Completeness Block 1048 Lot 45.03

The applicant submitted an application to the Board for a bulk variance to construct a new dwelling on the property. This property has steep slope issues which the applicant will need to obtain waiver or relief from prior to construction.

There was a question as to whether the Board of Adjustment had jurisdiction over this application. After some discussion it was determined that the Board of Adjustment would retain jurisdiction at this point.

The Board deemed the application to be complete and scheduled a public hearing to be held on March 31, 2011.

Georg Hambach made a motion to deem this application complete, as submitted. Maura Fennessy seconded the motion. A unanimous roll call vote in favor of the motion was taken by all members present.

MOTION CARRIED.

118 North Union Street, Discussion Block 1019 Lot 9

The applicant has already received approval for the restoration of an existing carriage house on his property.

John Munice, the property owner, and Gary O'Connor, the applicant's architect were sworn in by Mr. Shurts.

He is before the Board again because he submitted a construction permit application to the Construction Office that did not concur with the resolution that was approved.

After some investigation, it was determined, by the applicant, that the cost effective way to go would be to demolish the building and construct a new foundation and a two story building.

The current state of the building is in disarray according to Mr. Munice and Mr. O'Connor. They both feel that the building would be a much safer dwelling if they started from the bottom and reconstructed the existing building. It is not currently suitable for a second story apartment in the condition that it is in now.

Ken Rogers, the Construction Official agrees that the building foundation is not adequate to accommodate the plans that were submitted to the Construction Office.

Ms. Fennessy asked if the applicant decided to void the previously approved resolution and demolish the building completely, would that need a new variance. Mr. Shurts stated that it would require a new application for the new variance that would be needed for the setback issues.

The testimony at the public hearing about the historical significance of the carriage house held a big roll on the Boards decision to grant approval for this project.

Dave Moraski stated that it weighed a lot on his vote. He also feels that if you remove the historical nature of the building, then proper procedure would be to treat this as a new application.

Mr. Munice stated that he would rather just renovate the existing structure and not go through the approval process for any new variances.

Mr. Hambach stated that he would like to see the building restored and would prefer that the building complied with the setback regulations in the City's Ordinance.

The applicant needs to make a decision on what he wants to do and advise the Board of his decision.

Mr. Rogers stated that if the building is to be demolished, then the foundation needs to be relocated. As it is now, the foundation currently encroaches onto the neighbor's property and Mr. Rogers would not be able to grant approval to reconstruct on the existing foundation if the building is being demolished.

Ms. Weber suggested that if Mr. Munice is going to restore the building then maybe he should leave the dwelling as a garage because of the condition the building is in.

She also stated that the testimony that was given at the hearing indicated that the building was the first of its kind. She felt that some of the existing windows would be restored as part of this project.

Mr. O'Connor stated that the building is not on any State registry and that he didn't see a need to restore the windows, as they hold not historic value.

The applicant was also advised that if he decides to demolish the building, he will require approval from the Historic Preservation Commission. Although his property is not in the historic district, the Commission has the authority to review all demolitions in the flat area of the City.

Mr. Munice stated that he would advise the Board of his decision as soon as possible.

PAYMENT OF BILLS

John Leyman made a motion to pay the bills on the bills when the funds become available. Georg Hambach seconded the motion. A unanimous voice vote of ayes was taken in favor of the motion by all members present.
MOTION CARRIED.

PUBLIC PARTICIPATION

None

ADJOURNMENT

The meeting was adjourned at 9:10 pm.

Respectfully submitted,



Dave Moraski
Vice-Chairman



Crystal Lawton
Administrative Officer