

**North Hanover Township  
Joint Land Use Board  
MEETING AGENDA  
April 26, 2017  
7:30p.m. @ Municipal Complex**

**Call to Order**

The April 26, 2017 meeting for the North Hanover Township Joint Land Use Board was called to order at 7:30 pm by Chairman Tom Kimball

**Flag Salute**

**Statement – Provisions of the Open Public Meetings Act**

“The provisions of the Open Public Meetings Act have been met. Notice of this meeting has been transmitted to the Burlington County Times and the Courier Post, given to those having requested and paying for the same and posted on the bulletin board in the foyer of the Municipal Building “

**Attendance**

Those members present were:

Russ Comisky, Jim Durr, Lou DeLorenzo, Dave Forsyth, Joe Greene, Jack Smylie, Greg Grauer, Tom Kimball

Those members absent were:

Ron DeBaecke, Debbie Kucowski, Kevin Zimmer

Also in attendance: Gregory McGuckin Esq of Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors

**Memorialization Resolution 2017-06- Variance Application Denial- Kesser Realty LLC- 140 Cookstown-New Egypt Road Block 903 Lot 18**

**NORTH HANOVER TOWNSHIP  
JOINT LAND USE BOARD  
RESOLUTION 2017 - 06**

**RESOLUTION DENYING REQUEST FOR  
USE VARIANCE FOR  
KESSER REALTY, LLC  
BLOCK 903, LOT 18**

**WHEREAS**, Kessler Realty, LLC (the Applicant), has applied to the North Hanover Township Joint Land Use Board (the Board) seeking Use Variance Relief with respect to the property commonly known as Lot 18 in Block 903, as shown on the official tax maps of North Hanover Township; and

**WHEREAS**, the property in question contains approximately 5.58 acres and is located on the north side of Cookstown-New Egypt Road approximately 0.66 miles north of its intersection with Meany Road; and

**WHEREAS**, the applicant proposes site improvements to include the construction of an apartment building to replace a structure demolished in the 1990's as a result of a fire, which structure would have 16 two-bedroom apartment units; and

**WHEREAS**, the structure that previously existed and which was destroyed by fire contained 16 one-bedroom units; and

**WHEREAS**, the property is located in the C-1 Commercial Professional Zoning District of the Municipality, while other adjacent properties are also in the C-1 Zone, with properties to the north and south being located in the R-A Zoning District; and

**WHEREAS**, the applicant has submitted a Use Variance Plan prepared by Avila Engineering dated December 13, 2016, a written argument also dated December 13, 2016, and various supporting application documents; and

**WHEREAS**, this matter was the subject of a public hearing held before the North Hanover Township Joint Land Use Board on March 22, 2017; and

**WHEREAS**, prior to said hearing the Board had an opportunity to review the March 10, 2017, report of the Board's Consulting Engineer, Joseph R. Hirsch, P.E, and Consulting Planner, Barbara Fegley, AIC, P.P.; and

**WHEREAS**, the applicant has been represented by Jeffrey S. Appel, Esq.; and

**WHEREAS**, at the time of the public hearing, the applicant submitted into evidence as Exhibit A-1: proposed Architectural Renderings and Exhibit A-2: four color photographs showing the existing site and conditions; and

**WHEREAS**, applicant submitted the testimony of Mark Lichtenstein, a representative of the Property Management Team for the applicant and who has been associated with the property for the past six years; and

**WHEREAS**, the applicant testified that in addition to the new construction proposed, the applicant also intends to upgrade its existing septic system for the existing apartments already located on site; and

**WHEREAS**, the proposed apartments are not a permitted use in the C-1 and, therefore, the applicant required use variance relief from this Board; and

**WHEREAS**, it was the applicant's burden of proof to establish both the positive and negative criteria of the provisions of NJSA 40:55D-70(d); and

**WHEREAS**, in addition to the use variance relief required, the Board notes that there are existing nonconforming conditions on site with respect to the rear yard setback, 40 feet required and existing structure located 37 feet from the rear property line; and

**WHEREAS**, with respect to parking on site, the New Jersey Residential Site Improvement Standards require 1.8 parking spaces for each one bedroom apartment and 2.0 parking spaces for each two bedroom apartment. As a result, for the 32 one bedroom units currently existing, 58 spaces are required and for the proposed 16 two bedroom units, 32 spaces are required for a total of 90 spaces and the applicant proposes 77 total spaces as part of this plan; and

**WHEREAS**, the Board notes that had the applicant re-evaluated the number of bedroom units in the nearly proposed structure and the existing parking availability on site, as it relates to all RSIS standards, the applicant may have been able to meet this requirement; however, the applicant sought all new two bedroom units to be part of the new structure; and

**WHEREAS**, the Board and the Board's professionals raised a number of concerns with respect to various site plan issues including lighting, traffic directional signs, identification signs, rental signs, re-stripping of parking areas, replacement and repair of damaged and broken sidewalks, landscaping, dumpsters and an existing driveway, and the applicant requested those matters be deferred to a future site plan application; and

**WHEREAS**, with respect to the parking issues, the applicant testified that they had not received any complaints regarding parking and the average use of the existing units was between 40 and 45 vehicles; and

**WHEREAS**, the applicant submitted the testimony of Michael Avila, a Professional Planner of the State of New Jersey, who provided his professional opinion as to the proofs required for use variance approval; and

**WHEREAS**, Mr. Avila acknowledge that apartments are not a permitted use in the C-1 Zone and the plan as presented would essentially expand a pre-existing nonconforming use located on the subject property; and

**WHEREAS**, the positive criteria cited by the applicant's expert was that the property was particularly suited for the proposed use since the site has previously been utilized as an apartment complex for many years and because the new structure would be in proximity to the footprint of the apartment building that previously burned down; and

**WHEREAS**, Mr. Avila further opined that the site is particularly suited for the proposed apartment building since it will complement the existing apartment structures on site and, therefore, be compatible with its surroundings while at the same time the construction would promote the general welfare by providing housing opportunities; and

**WHEREAS**, with respect to the positive criteria as cited by the applicant's expert, the Board notes that essentially the same argument could be made to expand any pre-existing, nonconforming use since its proximity to other pre-existing, non-permitted uses would always be an argument to advance under such a scenario; and

**WHEREAS**, the Board notes further that, while the applicant refers to the proximity of the prior footprint of an apartment building, it has been over 20 years since such an apartment building was located thereon and the Board does not find such testimony to be of any relevance with respect to this application; and

**WHEREAS**, the Board is mindful of the case law of this State that when dealing with pre-existing, nonconforming uses, the general theory is that such uses should “wither on the vine and die” as opposed to being expanded; and

**WHEREAS**, the Board further determined that the property is not particularly suited for the proposed apartment building, since a prior structure located thereon burned to the ground and the existing septic system is in need of replacement; and

**WHEREAS**, with respect to the negative criteria, the applicant’s expert testified that since the site has existed “as is” for years as an apartment complex and since the proposed use is not a “new use” on the subject property, same would not have a negative impact on the character of the neighborhood and, therefore, would not be a substantial detriment to the public good nor create an impairment of the Zone Plan and Ordinance; and

**WHEREAS**, with respect to these arguments the Board notes that the applicant’s expert has essentially parroted the language of the statute as to substantial detriment and notes that the applicant has failed to submit any evidence as to the surrounding neighborhood and surrounding land uses, while referring to the property “in its as is condition”, fails to address the fact that this pre-existing, nonconforming use has far less units and tenants than would be residing therein if a new building with two-bedroom units is constructed; and

**WHEREAS**, while the use proposed is not necessarily a “new use” it is a large expansion of what has actually existed for the past 20 years and the applicant has failed to present any testimony as to such impact upon the surrounding neighborhood; and

**WHEREAS**, the Board also raised concerns regarding the soils located on site noting that these are some of the porous soils in town and the applicant has testified that the existing septic system is failing and needs to be replaced; and

**WHEREAS**, the Board believes it is inappropriate to expand the septic system to permit 16 new two-bedroom apartment units when the soils are of such a poor quality, and the Board notes that the applicant has once again failed to provide any evidence of soil testing or its proposed septic plan, which is an important factor for the Board to consider since if the septic field needs to be enlarged there would be even less parking available and a smaller driveway access based upon the location of same; and

**WHEREAS**, North Hanover Township is, among other things, a farming community and the Board Members are fully familiar with the soils throughout the community and the fact that the existing septic system cannot handle the use of the existing residential units despite the fact it was designed to handle three separate buildings, including one which has burned down over 20 years ago, clearly indicates that the septic system and the impacts it might have are an important consideration by the Board with respect to this application; ; and

**WHEREAS**, based upon historical facts that one building has already been burned down as there is insufficient fire suppression to address same, it would be foolish for the Board to permit the construction of a new residential apartment building at the exact same location when there is no evidence of any improvements in the fire suppression availability; and

**WHEREAS**, the Board is satisfied that the applicant has failed to establish the entitlement to relief, has failed to establish the positive and negative criteria of the statute, has failed to advance sufficient special reasons to grant the relief requested and believes it inappropriate to authorize an expansion of this pre-existing, nonconforming use for 16 two-bedroom residential apartment dwellings in the C-1 Commercial Zoning District where same are not permitted by Ordinance.

**NOW THEREFORE BE IT RESOLVED** on this 22 day of March, 2017, by the North Hanover Land Use Board that the Applicant’s request for Use Variance Relief be and hereby is denied; and

**BE IT FURTHER RESOLVED** notice of this decision shall be published by the Board Secretary in the official newspapers of North Hanover Township;

DATE ADOPTED: March 22, 2017

DATE MEMORIALIZED: April 26, 2017

FOR ADOPTION: Jim Durr, Lou DeLorenzo, Dave Forsyth, Joe Greene, Jack Smylie, Tom Kimball

AGAINST: Kevin Zimmer, Greg Grauer

ABSTENTIONS/RECUSALS: Ronald DeBaecke, Lou DeLorenzo

Tom Kimball made a motion to memorialize Resolution 2017-06; Joe Greene seconded the motion. Roll Call: Jim Durr, Lou DeLorenzo, Dave Forsyth, Joe Greene, Jack Smylie, Tom Kimball

**Forbes Filling Extension on Resolution 2016-10 Approval of Minor Subdivision Block 700.01 Lot 2.04**

Anthony Jantorno was sworn in. Mr. Jantorno is the son of the applicant Kathy Forbes. Mr. Jantorno stated that due to personal issues, and also hold ups with the county they have not been able to file their subdivision the county and is requesting an extension. The board felt 1 year was sufficient to get the work done and the subdivision filed. Mr. Jantrono agreed he could get the subdivision filed in this time frame. Lou DeLorenzo made a motion to approve the one year filling extension. The motion was seconded by Greg Grauer. Roll Call: Russ Comisky, Jim Durr, Lou DeLorenzo, Dave Forsyth, Joe Greene, Jack Smylie, Greg Grauer, Tom Kimball

**Farrell Filling Extension on Resolution 2016-11 Approval of Minor Subdivision Block 300 Lot 14**

John Farrell was sworn in. Mr. Farrell is the son of the applicant Melvin Farrell. Mr. Farrell requested an extension for filling his subdivision due to hold ups with Burlington County. He felt the issues should be resolved soon and they will get the subdivision filled with the county. The board offered a one year extension. Mr. Farrell agreed this was enough time to do the work needed to file the subdivision. Lou DeLorenzo made a motion to approve the one year filling extension. The motion was seconded by Greg Grauer. Roll Call: Russ Comisky, Jim Durr, Lou DeLorenzo, Dave Forsyth, Joe Greene, Jack Smylie, Greg Grauer, Tom Kimball

**Public Comment**

Chairman Tom Kimball opened the floor to public comment. Greg Grauer made a motion to close public comment seeing as there is no public to comment; motion was seconded by Lou DeLorenzo. All in Favor.

**Board Discussion**

Tom Kimball made a motion to close board discussion, motion was seconded by Greg Grauer

**Correspondence**

No correspondence.

**Adjournment**

Being no further business, a motion was made Greg Grauer at 7:44 pm to adjourn the meeting, seconded by Lou DeLorenzo, the motion was carried unanimously

Respectfully submitted by,  
Alexandra DeGood  
JLU Board Secretary  
Approved: September 27, 2017