

**BLAIRSTOWN TOWNSHIP
LAND USE BOARD
October 21, 2019**

MINUTES

The Blairstown Township Land Use Board met in a regular session on Monday, October 21, 2019, at 7:30 pm at the Blairstown Municipal Building, 106 Route 94, Blairstown, New Jersey. The following members were present: Barbara Green, David Keller, Richard Mach, Rosalie Murray, Michael Repasky, Steven Sikkes, Debra Waldron, Wickliffe Mott, Norman Talley, Adam Baker, and Chairman James Sikkes. Nicholas Mohr was absent. Also present were: Board Engineer, Ted Rodman, Board Attorney, Roger Thomas, and Board Secretary, Linda Grohs.

SALUTE TO THE FLAG: was recited.

ROLL CALL: was taken.

THE SUNSHINE STATEMENT: was read.

LAND USE BOARD DEADLINE DATES:

Chairman Sikkes stated that submission of information supporting applications must arrive at Town Hall **10 calendar days** prior to meetings.

MINUTES OF PREVIOUS MEETINGS: (As distributed prior to the meeting date).

Minutes of the September 16, 2019 Regular Meeting of the Land Use Board were approved with changes.

Action: A motion was duly made by Mr. Keller, seconded by Mrs. Green, to approve the Minutes of the September 16, 2019 Regular Meeting of the Land Use Board.

Roll call vote: Green, Keller, Mach, Murray, S. Sikkes, Waldron, Mott, Talley, Baker, and J. Sikkes – yes. Absent – Mohr. Abstain - Repasky.

RESOLUTION:

LB#06-15, First Presbyterian Church, Block 1206, Lot 1, 1 Main Street, Preliminary & Final Major Site Plan, Fourth (4th) Extension

Chairman Sikkes asked for a motion for approval of the resolution as there were no changes.

Action: A motion was duly made by Mrs. Waldron, seconded by Mr. Keller, to memorialize the resolution for the fourth (4th) extension for the First Presbyterian Church through December 2020.

Roll call vote: Green, Keller, Murray, S. Sikkes, Waldron, Talley, Baker, and J. Sikkes – yes. Abstained – Mach, Mott, Repasky. Absent – Mohr.

LB#08-19 Blair Academy (Steckel House), Block 906, Lot 13, 2 Park Street, Preliminary / Final Major Site Plan and C Bulk and D Use Variance (Mrs. Waldron and Mr. S. Sikkes are recused from this application.)

Mrs. Green advised of corrections on page 2 where deck is noted twice, page 3 needs the word “was” inserted and “including” needs to be changed to “included”. Conditions need to be amended to include the Warren County Health Department.

Chairman Sikkes asked for a motion for approval of the resolution with the above-noted changes incorporated.

Action: A motion was duly made by Mr. Keller, seconded by Mrs. Murray, to memorialize the resolution for Blair Academy (Steckel House).

Roll call vote: Green, Keller, Mach, Murray, Mott, Talley, Baker, and J. Sikkes – yes. Abstained – Mott, Repasky. Recused – S. Sikkes, Waldron. Absent – Mohr.

LB#06-19 The Last Frontier (Brian Piccolo), Block 2003, Lot 27, 44 Hope Road, Minor Site Plan and D Use Variance (Mrs. Waldron and Mr. S. Sikkes are recused from this application.)

Mrs. Green advised of a correction on page 3 where “20 foot high wood gate” should be “20 foot wide wood gate”.

Chairman Sikkes asked for a motion for approval of the resolution with the above-noted change incorporated.

Action: A motion was duly made by Mrs. Green, seconded by Mr. Keller, to memorialize the resolution for The Last Frontier.

Roll call vote: Green, Keller, Mach, Mott, Talley, Baker, and J. Sikkes – yes. Recused – S. Sikkes, Waldron. Abstained – Murray, Repasky. Absent – Mohr.

COMPLETENESS:

LB 10-19 Blair Academy (Main Street Parking Lot), Block 906, Lot 13, and Block 1212, Lot 1, Preliminary / Final Major Site Plan, Preliminary / Final Major Subdivision, and C Bulk Variance

Mr. Michael Selvaggi of Lavery, Selvaggi, Abromitis & Cohen introduced himself, representing Blair Academy for the application as described by Chairman Sikkes. A completeness review report was generated on October 16, and a couple of waivers were requested. In review, Mr. Selvaggi explained that the two pieces of property in the application involve the vacating of a County road, and a portion of that property will be improved upon by Blair Academy and dedicated to the municipality to use as public parking for the Main Street area.

1. Blair Academy has requested a waiver of the escrow fees as they are completing this at their own cost. The Township Committee graciously agreed to waive those fees.
2. As far as no approval signature lines on the plat, they will add those signature lines and revise before the next meeting.
3. The waiver requested from supplying plans and profiles of all storm and water mains was due to them reducing the amount of impervious coverage, and their testimony will be that the existing stormwater system will be able to handle the runoff.
4. The protective covenants, easements, and/or deed restrictions (they have asked for waivers from) are a result of the County vacating the road where there were issues that presented themselves that would not have engaged in that decision to vacate the street.
5. Location of all existing structures within 100 feet of the project boundary – the main campus with the office, given the size of the proposal, it is not necessary to engage in that analysis.
6. Lighting details not provided – JCP&L will come in and do the lighting for this municipal lot.
7. Storm drainage system plans and computations – the size of the project does not warrant this and in an effort to maintain some cost sensibility with this project, we are requesting a waiver.

Roger Thomas stated that the nature of the project is a parking lot and the waivers requested appear to be the type of waivers that for Completeness could be waived. There is certainly enough information for the Board and the Public to understand what the project is about. During the course of the application, the Applicant will be required to provide more information if needed, even if waived for Completeness.

Chairman Sikkes asked if Board members had any issues, and they did not.

Mr. Thomas stated that it would be appropriate to ask for a motion to deem the application Complete, granting the waivers requested.

Action: A motion was duly made by Mrs. Waldron, seconded by Mr. Mach, to deem the application complete with waivers.

Roll call vote: Green, Keller, Mach, Murray, Repasky, S. Sikkes, Waldron, Mott, and J. Sikkes – yes. Absent – Mohr.

Mr. Selvaggi confirmed that they would be on the Monday, November 18, 2019 agenda for Public Hearing.

Mrs. Green stated that Main Street belongs to Blairstown now, and the plans refer to it as County Route 660. Mr. Thomas answered that could be addressed in the course of the hearing.

LB 11-19 DeKorte, Block 801, Lot 6.02, 23 Four Corners Road, C Bulk Variance

Mr. Thomas asked the DeKortes to identify themselves for the record. Wayne DeKorte and Melissa DeKorte introduced themselves. Mr. Thomas stated that this meeting is for Completeness to ensure that all required parts of the application are in place. Mr. Rodman has submitted his report dated October 17, 2019, and Mr. Thomas asked the DeKortes to confirm they have received the report, which they did. Mr. Rodman outlined the items below to be waived, and he recommends the items be waived for completeness only.

1. No key map on the plat
2. Title block does not contain applicant's name, address and telephone number
3. Scale provided is written only, not graphic
4. Sketch of proposed new building not provided

Mr. Thomas stated that if the Board agrees with Mr. Rodman, Chairman Sikkes should seek a motion to deem the application complete, granting the waivers requested.

Chairman Sikkes asked for the motion.

Action: A motion was duly made by Mrs. Waldron, seconded by Mr. Keller, to deem the application complete with waivers.

Roll call vote: Green, Keller, Mach, Murray, Repasky, S. Sikkes, Waldron, Mott, and J. Sikkes – yes. Absent – Mohr.

Mr. Thomas reminded the applicants that they should prepare their Notice, hopefully for the November 18, 2019 meeting.

LB 12-19 Oz94 LLC / Kramer, Block 703, Lot 4.05, 174 Route 94, D Use Variance (Mrs. Waldron and Mr. S. Sikkes are recused from this application.)

Mr. Richard Keiling introduced himself as appearing on behalf of his client, Oz94 LLC. This is Gary Arvary's old office building right down from the Acme. Dr. Arvary previously received a D Use Variance for use as a medical building, and his client (new owner) is requesting changing this from strictly a medical building to a professional office building which would allow a variety of other uses. This would facilitate future renters to be able to utilize the building for a client's office so that they have a longer scope of what would be permitted there.

Mr. Thomas stated that this is a review for Completeness and confirmed that Mr. Keiling had received Mr. Rodman's report of October 16, 2019. Mr. Rodman only had one item (see below) to be waived and he felt that it was a waivable item.

1. Written scale provided. No graphic scale.

Mr. Thomas stated that if the Board agrees to deem this D Use Variance complete (the two Committee members cannot vote but do not need to leave the dais as this is Completeness only), a motion to that effect should be sought.

Chairman Sikkes asked for a motion for Completeness.

Action: A motion was duly made by Mr. Keller, seconded by Mr. Mach, to deem the application complete with waivers.

Roll call vote: Green, Keller, Mach, Murray, Repasky, Mott, and J. Sikkes – yes. Recused – S. Sikkes, Waldron. Absent – Mohr.

LB 13-19 Korpos, Block 505, Lot 1.13, 5 River Run Hollow Road, C Bulk Variance

Mr. John Paul Velez introduced himself on behalf of the applicant, Mr. Korpos. Mr. Velez has reviewed Mr. Rodman's report of October 17, 2019, and he asks that these items be waived with the exception of #8, which is the 200' list which has not yet been produced. The items in Mr. Rodman's report are listed below.

1. No key map provided
2. There is no legible title block on the plat. It appears to be a copy of a previous septic design. There is no signature or seal of the professional who prepared the original plat.
3. Applicant's name, address, and phone number are not on the plat, but are found on the application form.
4. No scale provided.
5. No north arrow.
6. No approval signature lines.
7. Zoning district information not on the plat.
8. List of adjoining property owners was requested but not received yet.

Mr. Velez explained the background whereby a 2008 application was submitted for the construction of this garage. There was a variance that was requested of 10 feet that was ultimately denied. The applicant then reduced the size of the garage, and there were zoning and construction permits granted by the Town. The building was then

constructed. Recently, a neighbor has placed a corner marker, and it became apparent to the Korposes that the garage was at 8 feet and not at the 15 foot side yard setback, necessitating the variance.

Mr. Rodman felt that the map items could be waived, and Mr. Thomas advised the Board that they could deem the application complete with waivers.

Mr. Thomas advised that if the Board wished to deem the application complete with waivers, a motion would be appropriate.

Chairman Sikkes asked if there were any questions from the Board and there were none. He then asked for a motion to approve the application complete with waivers.

Action: A motion was duly made by Mr. Mach, seconded by Mrs. Murray, to deem the application complete with granted waivers.

Roll call vote: Green, Keller, Mach, Murray, Repasky, S. Sikkes, Waldron, and J. Sikkes – yes. Absent – Mohr.

PUBLIC HEARING:

LB#07-19 David Berberian, Block 2101, Lot 4.02, 141 Hope Road, Interpretation (Original Application for a C Bulk Variance) (Mrs. Waldron and Mr. S. Sikkes are recused from this application.)

Mr. Richard Keiling introduced himself on behalf of David and Sabrina Berberian. Mr. Keiling put a map on the easel.

Mr. Thomas reviewed that the application had been submitted as a C Bulk Variance and at last month's meeting they discussed the need to determine the nature of the application and whether this is a C Bulk or D Use Variance. The decision was that the appropriate approach was to do an Interpretation. The application was not heard at the last meeting due to the issue of whether notice was required for an Interpretation. There was agreement reached that no notice is required in the Township of Blirstown's ordinances, and everyone is ready to proceed with the Interpretation.

Mr. Thomas asked Mr. Keiling if the map on the easel is the same as what was submitted with the application, and Mr. Keiling confirmed.

Mr. Thomas swore in David Berberian and Sabrina Ladlee, both of 141 Hope Road, Blirstown.

Mr. Keiling stated that last month a neighbor raised the question if a business was being operated on the property. Mr. Keiling asked the size of the property, and Mr. Berberian answered that their property is 26 acres, is a preserved farm, and has a single-family dwelling, a horse barn, and stables. They had secured a zoning permit for an accessory farm building on the property. They are not renting any kennel space nor do they receive any income. They cannot board horses or dogs. They derive no income from boarding or showing animals. There is no business that is being operated here. There was discussion of a hunt club on the property and a brochure on Spring Valley Hounds (SVH). Mr. Berberian explained that SVH is a club comprised of members where they ride horses with the dogs and go to various properties, including their own. This activity has been going on for over one hundred years.

Chairman Sikkes asked if the members pay dues, and Mr. Berberian answered that there are membership dues. Chairman Sikkes asked if any of that funding goes to the Berberians, and Mr. Berberian answered no. The dues go to fund their activity. Members rotate to various properties, hunt with the dogs, and dress up and run around with the dogs. Mrs. Waldron asked if they bring their own dogs or if they use the Berberians' dogs. Mr. Berberian answered that they use the Berberians' dogs, but people bring their own horses which go home with them. Mr. Thomas asked if they would use other dogs if they go to another property, and Mr. Berberian explained that their dogs would go to the other property.

Mrs. Waldron asked about events at 141 Hope Road and if they are paid for or are there clinics? Mr. Berberian answered no, that they are for learning purposes. Mrs. Waldron asked about Facebook advertising for and introductory fox hunting clinic which was held on September 14, 2019, at 9 a.m. Ms. Ladlee asked to interject as she is more knowledgeable on the topic. She explained that the clinic was a fundraiser for Spring Valley Hounds (SVH) to raise funds to further improve the building, feed the hounds, and for vet care. This is costly, and the way the hunt is able to sustain this is through doing activities with the public to educate them in fox hunting and the tradition of hunting with a twist - there is no killing at their hunts. They teach people and invite them to come to experience what it can be like to be in a group of like-minded people. Any revenue made goes to SVH hunt which is a non-profit organization. Mrs. Waldron asked about Black Hounds Stables LLC, and Ms. Ladlee explained that it is her LLC and was set up to protect herself because she rescues and rehabilitates horses. An example would be if one of her hunting friends or members came and falls off a horse and sues her. She is an LLC and her land is protected. Most

of their landowners do the same, and there are over 70 land owners who do this and also have insurance from the hunt. Mrs. Waldron asked how long they have owned this property, and Ms. Ladlee answered that this is their third winter. Mr. Keiling asked if the hunts rotated over other properties, and Ms. Ladlee said there are about 70 different land owners with over 1000 acres involved. Mr. Keiling reviewed that there is no business operation, no income, no boarding or renting, so this is not a business per se.

Mr. Thomas understands the events are designed to fund the feeding of the hounds, but are all of the hounds in the hunt club on the Berberians' property? Ms. Ladlee answered yes and that there are more than 70 landowners, not members (of which there are more) in the hunt club. Mr. Thomas stated that they will rotate the hunts among these 70 different properties, and Ms. Ladlee confirmed. Mr. Thomas reconfirmed that when they come they bring their horses, but in fact the hounds are on the Berberians' property. The other members do not have their own individual hounds, and Ms. Ladlee answered that was correct. Ms. Ladlee stated that they are highly trained, and they are diligent on this for safety. Mr. Thomas asked Ms. Ladlee to explain their fundraising work to feed the hounds and for vet expenses. Ms. Ladlee answered that they do numerous ones. They did do a clinic on their facility where they invited new riders on a trail ride to see if it was the right fit for them and their horses. This also included their families as it is a family activity. They also conducted a polo match over in Allamuchy and raised over \$2000 for the Cancer Society. They did a demonstration on October 20 in New Vernon to promote hunting and the activity of the sport. They also do hunter paces, where multiple landowners donate their land, where teams of riders go out and ride a horse. These are all ways they get the public involved, which generates income to keep the hunt alive. Mr. Thomas asked if there is a fee involved, if it is not a charitable event, and Ms. Ladlee answered yes, to feed the hounds. Mr. Thomas asked if the fees vary depending on the event, and Ms. Ladlee confirmed. Mr. Thomas asked if the events occur on both her and other properties and she answered yes. Mr. Thomas asked if there is a fee per family or participant. Ms. Ladlee explained if they are just coming to audit (attending to watch and eat food), the fee is less; and if they are a participant and bring their horse, then the fee is higher for insurance purposes. For a polo match they are charged by the carload.

Mrs. Waldron asked who organizes the insurance portion so that riders are protected, and Ms. Ladlee answered that SVH does it through MFHA (Master Fox Hunters Association) which is nationwide. Mrs. Waldron asked if she considered this a commercial use of the property. Ms. Ladlee answered no, that fees are \$10-\$20. Mrs. Waldron stated that farms are not for this purpose, and dog kennels (she knows that the dogs belong to the Berberians) are only permitted in the HC-1 zone. Ms. Ladlee answered that it seems "kennel" is a dirty word in Blairstown. What would you call a building that houses dogs? Mrs. Waldron stated that the point is Blairstown doesn't have kennels and they are only allowed in the commercial zone. Ms. Ladlee asked what you would call the building – either private or commercial? Mrs. Waldron answered that you would call it a kennel. Ms. Ladlee stated that was correct – a kennel – whether private or not, and she queried whether it would be preferred to call it a dog barn. Mrs. Waldron stated that the particular use is for a commercial zone, not residential or as a farm use. It is usually dedicated to the Highway Commercial Zone. Mrs. Waldron stated that the applicants refer to it as an accessory structure, and it is not. It is a kennel as you referred to it, by your definition, and the pictures. This is not normally a permitted use.

Mr. Keiling discussed the definition of a kennel or a kennel for pay, and he would not disagree that when it is for pay, it is in the Highway Commercial (HC) zone. If a person has three (3) dogs with a building for them and call it a kennel for the dogs, it is not a commercial kennel. Mrs. Waldron asked how many dogs the Berberians have, and Ms. Ladlee answered they have 17 registered, licensed, and vaccinated dogs. Mrs. Waldron stated that is not a personal use; it is a business use. Ms. Ladlee stated that they have 18 horses which Mrs. Waldron confirmed is a farm use. Chairman Sikkes asked if they have 18 horses of their own, and Ms. Ladlee confirmed. Chairman Sikkes asked how many acres they have; Ms. Ladlee replied: "26 acres". Chairman Sikkes stated that the town has an ordinance for the number of non-household animals related to acreage. Mr. Thomas answered that this issue would be addressed at another point.

Mr. Thomas asked if there were any other questions for this witness from Mr. Keiling, and he said no. Mr. Selvaggi came forward to question the Berberians. He submitted as Exhibit 01 the packet of pictures from Facebook that Mrs. Waldron referred to and handed copies to the Board. Mr. Selvaggi asked Ms. Ladlee to confirm the pictures were of her outbuilding and she did so. SVH refers to them as kennels themselves and on their website. He asked how much money is generated/year to support the kennels. Ms. Ladlee answered that she would have to ask one of their Masters, but it is probably \$800/month for food and Mr. Selvaggi stated that would be about \$10,000/year. Ms. Ladlee answered that vet care is donated by a member of the hunt club who is a vet. Mr. Selvaggi stated that they must at least raise the \$10,000 for the food. Ms. Ladlee answered that she pays from her pocket as they don't make enough to cover the costs. A new member would have to be invited first, and they are charged \$500/year and it is a recurring annual fee. Mr. Selvaggi asked how many members they have, and Ms. Ladlee answered riding members are in the dozens, maybe a little more. Mr. Selvaggi calculated that would be about another \$10,000, and Ms. Ladlee disagreed as many are junior members which are charged less. Mr. Selvaggi stated that they are raising money in support of the activity. Mr. Selvaggi stated the 17 dogs stay in the kennel, and Ms. Ladlee said yes but they are not

there now as they were removed after Mr. David Diehl's violation letter and until the matter could be resolved. The dogs are in the barn now.

Mr. Selvaggi asked if the members always ride with SVH, and Ms. Ladlee stated they could ride with another club but it would be their hounds. Ms. Ladlee stated she and her group train the dogs, and she has been a member for ten (10) years. It is all volunteer; nobody gets paid. Mr. Selvaggi asked who paid for the construction of the barn and Ms. Ladlee answered that it was donated by Dick Weeks. Mr. Berberian did much of the construction and he stated the cost of the building was \$24,000 and it has electricity and water (well). They have estimates on insulating the building to keep it warm for the dogs and for sound (in the building) to help their neighbors. The horses have one day off/week. Hunts are Wednesdays, Sundays and holidays at multiple locations year round. The horse owners pay for their horses. Ms. Ladlee drives the dogs and pays the costs to get them to other locations. Since owned, they have had two hunts at 141 Hope Road; one was only the advertised clinic and the other for training the hounds so they were not actually hunts. Training takes place every day diligently. The hounds are in the old barn structure on the property that is being rebuilt (barn is being rebuilt). Mr. Berberian stated that the old barn is 150 feet away.

Mr. Selvaggi stated that Mr. Keiling's argument is that the Berberians were not being paid, so you can't call it a kennel. Mr. Selvaggi's argument is that the Berberians call it a kennel, and simply not being paid doesn't become a permitted use in a zone.

Mr. Keiling stated that the nomenclature of kennel could be changed to living facility, supplemental barn, etc. Mr. Keiling had one other witness.

Mr. Thomas swore in Dr. David Warren Schroepfer, 35 Rushmore Lane, Hackettstown. Dr. Schroepfer introduced himself as a veterinarian and one of the Masters for SVH. Mr. Keiling asked if he is a licensed veterinarian in the State of New Jersey, and Dr. Schroepfer confirmed. He works for Bound Brook Veterinary Clinic and has done so since 2005. He explained that a Master is one of the Presidents (so to speak) of SVH. Mr. Keiling's clients (the Berberians) are members. One (1) is on the Board of Trustees. Dr. Schroepfer is now and has been (prior to this location) the vet for the hounds on a voluntary basis, and he comes here two-three (2-3) times per week. No outside animals are boarded on the property, and he doesn't provide vet care to any other animals at the Berberians. There is no income from boarding horses or other animals. Other than reimbursement for a portion of the food for the dogs, the Berberians receive no weekly or monthly stipend. Dr. Schroepfer stated that to make money, you have to spend money, so much money goes to the preparation of the fundraising events. The rest goes to the hounds and their care. When asked if there are any other vets that take care of the hounds, Dr. Schroepfer answered yes that they receive care and / or emergency care in Blairstown, as his facility is about an hour away from the Berberians' property. Mr. Keiling asked Dr. Schroepfer "as a professional, what do you call a private individual who has a number of animals and built a structure"? Dr. Schroepfer answered a homeowner. A kennel is only a building. It can be an enterprise, but the term kennel is only a building itself. We have no other term for a building that houses dogs except for a kennel. Whether it is an enterprise or whether it is the building itself, the terms for that are the same. Mr. Keiling asked Dr. Schroepfer if the business he works for boards dogs. Dr. Schroepfer answered that they do medical boarding for some patients. The kennels at his vet location are not as good quality as the Berberians' property. The Berberians have much more room to go in and out, and much more interaction. It is a much nicer environment.

Mr. Thomas asked and Dr. Schroepfer confirmed that he takes care of the dogs on a pro-bono basis and also the limited care of horses on a pro-bono basis. Mr. Thomas stated that Dr. Schroepfer said the only recognized term for the housing of dogs is a kennel. Mr. Thomas asked if doghouse was a term used, and Dr. Schroepfer answered that doghouse is for a single dog. If you built something for multiple dogs, you wouldn't call it multiple doghouses, you would call it a little kennel in the back yard.

Mrs. Waldron asked if the Berberians applied for a permit for an accessory structure or as a kennel. Mr. Berberian answered that he spoke with the Zoning Officer and applied for a farm storage/farm equipment permit. Mrs. Waldron asked if that was what is in the building. Mr. Berberian answered that is all that is in there now. Mrs. Waldron stated that was not why they built the kennel, correct? Mr. Berberian answered that they knew what they wanted to do with the building but he also wants to store equipment down there and they are now. Mrs. Waldron stated the reason they put kennels in a commercial zone is for noise, and there is acreage required to buffer that noise so there is no negative impact on residents. Cows and horses do not have the same impact as hounds do. Mrs. Waldron has five (5) beagles across the street from her that start barking early in the morning and go on barking all day. Dr. Schroepfer lived right across the street from the barn facility on the campus when he lived in Madison, and he woke up every morning to lots of chickens. He questioned if there is a commercial requirement for chickens in Blairstown, and Mrs. Waldron answered that there are acreage limitations for that situation.

Mr. Thomas asked Mr. Selvaggi if he had any more comments, and he responded “no”, the applicants have acknowledged that it is a kennel.

Mrs. Murray stated that she understands they say they are not running a business and that they are a non-profit, but certainly the dogs that you have in your home are pets. Dr. Schroepfer answered that some are in the home and are fostered. Mrs. Murray disagreed.

Mrs. Waldron asked where the dogs stay if the structure is not heated, especially the runs? She stated that Blairstown Animal Hospital’s application was guided by the rules for the definition of the word kennel. They had to provide adequate heating, lighting, electricity, and water. The Berberians’ animals were there up until the time they received a violation with no such care (no heat or air conditioning). Mrs. Waldron boards with Hope Kennels and they have those kinds of facilities. The permit was for an accessory structure, when in fact that is not what it was. It was a kennel from the beginning and the permit was misrepresented for the use. If it was farmland, that would be a granted use under our Ordinances as per the definition.

Mr. Mach asked how long the Berberians have owned their property, and Mr. Berberian answered that this is their third year. Mr. Mach stated that other members of the club have large properties with hunts, and what are the sizes of those pieces of property. Ms. Ladlee said some are as small as five – seven (5-7) acres, and others are multiple hundred acres. Mr. Mach stated the applicant previously said 1000 acres in total for all.

Mr. Thomas asked Dr. Schroepfer if the property was used for this use previously before Mr. Berberian purchased it. Dr. Schroepfer answered that he had not been on the property before Mr. Berberian purchased it. Dr. Schroepfer clarified that he had cared for the hounds for the previous owner of the hounds, Mr. Gibbs. Mr. Thomas asked if Mr. Gibbs had engaged in this activity and was a member of this club, and Dr. Schroepfer confirmed. Mr. Thomas asked how long the activity has taken place on this property, and Mr. Berberian explained that it was not on the Berberians’ property. Mr. Gibbs lives in Allamuchy and he owned the hounds before. The hounds only came to 141 Hope Road in June 2019, so air conditioning was not necessarily required nor heating. Mrs. Murray asked if the hounds came to the property in June, where were they previously, and Dr. Schroepfer answered they were in Allamuchy. Mr. Thomas stated they were owned by the Gibbs family, and Chairman Sikkes stated the Gibbs property is a farm. Ms. Ladlee explained that the hounds transferred ownership from the Gibbises to the Berberians in June 2019, which Dr. Schroepfer reiterated. Mrs. Waldron asked if all the dogs are licensed under Ms. Ladlee’s name in Blairstown, and Ms. Ladlee answered yes. The hounds rotate to whoever is best suited to care for them, and that this is a practice that is over 100 years old. Ms. Ladlee has a record of how many different locations the hounds have resided.

Mrs. Waldron asked about the negative impacts known and the inherent beneficial use to satisfy the standards, and Mr. Selvaggi objected as this is an Interpretation and not a D Use Variance. Mr. Thomas agreed.

Mr. Mott asked a question about the hounds being licensed to Ms. Ladlee personally and not the LLC, and she confirmed. Mr. Mott asked if she is reimbursed for the food and does she submit receipts and the non-profit reimburses her. Mr. Berberian answered no that the non-profit purchases the food.

Mr. Mach asked what the distance is between the dogs and the nearest neighboring residents, and Mr. Berberian answered that there is about 900 feet of woods which is hilly terrain.

Mr. Steven Sikkes advised that he visited the property and they have done some nice work on the property. There is nothing malicious happening. The issue is the building is in the back of the property by the wetlands and there is an echo off the water which creates the noise issue.

Mr. Repasky stated his understanding is the hunt club is a non-profit business, the equipment used by the hunt club is maintained and cared for by the Berberians, and they are supported by the non-profit business (food, etc.). Mr. Repasky’s question for Mr. Thomas: “Is this type of a business arrangement in any way a business being from the property.” Mr. Thomas answered that this is what the Board is deciding. Mr. Thomas will state the issues that the Board has to deal with.

Mrs. Green asked if the insulation to be installed is to maintain the heat, and Mr. Berberian answered that it is to maintain the heat and to dampen sound. Mr. Keiling asked if the product they are proposing will limit noise, and Mr. Berberian confirmed this. Mr. Selvaggi objected because he is not sure Mr. Berberian is an expert in the terms of the insulation. This would be a provision of a site plan approval which proves his point that this is a commercial use. These types of discussions would be reserved for that type of application. Mr. Thomas stated it may not prove Mr. Selvaggi’s point, but he does agree the issue of insulation or not doesn’t address the issue of whether this is a kennel under the ordinance. To finalize her question, Mrs. Green said that if the dogs are in the run, insulation doesn’t work in the runs. Mr. Berberian stated that trees would be planted for noise abatement. Ms. Ladlee has been advised by

Scott Hendricks, Animal Control Officer, about bark boxes, and she is meeting with Hope Kennels to discuss the subject. Everything was halted when this issue came up. Mrs. Waldron asked if bark boxes would have a negative training impact, and Ms. Ladlee answered no as the dogs are not supposed to be barking. Mrs. Waldron asked why there was a noise complaint if that is the case, and Ms. Ladlee answered that there was one (1) recent complaint in three years. This was from her retired hound and their collie at about 10-10:30 a.m., and the hounds were not on the property at that time. Dr. Schroepfer spoke to training the hounds with both positive and negative reinforcement, and both are applicable depending on their use. Mrs. Waldron asked for the hours of the complaint and if there were other hours (either earlier or later) that there were complaints. Ms. Ladlee said there is the one complaint which was at 10-10:30 a.m., and that Scott Hendricks has paid many visits to their property and has yet to hear the hounds.

Mr. Keiling asked if the Berberians had spoken to their neighbors when they were putting up the building, and Mr. Berberian answered that they had asked all their neighbors, including Mr. Scherrle who is represented by Mr. Selvaggi. Mr. Scherrle was fine with the building, and he came by to say hello and ask how they were doing. Their personal dogs were there then and not the hounds. Mr. Berberian told Mr. Scherrle about the purpose of the building and any sound problems he might experience would be confronted.

Mr. Selvaggi stated that his client disagrees with the characterization of the discussion. Mr. Selvaggi asked Mr. Berberian if he told his client that he was putting in a kennel, and Mr. Berberian answered that he did advise everyone. If that was the case Mr. Selvaggi asked why he did not put down a kennel in the zoning application. Mr. Berberian stated that he explained what he was doing and the permit he filed was what was decided to do. Mr. Selvaggi read the permit which stated converting from farm building to mixed use. Mr. Berberian explained the mixed use for personal use for the hounds. Mr. Selvaggi asked why they did not use the word kennel in the application? Mr. Berberian answered that it is not just a kennel, it is for storage also. Mr. Selvaggi stated that Mr. Berberian openly admitted that this is a kennel and why wasn't it used in his application. Mr. Berberian answered that he did say that and Mr. Selvaggi produced the application and the word kennel is not used. Mr. Selvaggi asked why he did not use the word kennel, and Mr. Berberian answered he did but they put it through without it. Mr. Selvaggi asked if he was concerned about the implication of the use of the word kennel. Mr. Berberian said no, because what else was he going to do with all those dogs. Mr. Keiling stated that his position statement advised that the building was for dogs and a kennel, and they could attach the position statement to the permit. Mr. Selvaggi asked who prepared the position statement, and Mr. Keiling answered that he prepared the position statement, and that he signed the application for the applicant, Mr. Berberian. Mr. Selvaggi asked Mr. Berberian if he had seen the position statement and he answered yes, he had seen everything Mr. Keiling had prepared. Mr. Selvaggi closed by stating that on the question of the Interpretation, he had no more questions.

Mr. Thomas opened the discussion to the public and cautioned that they are dealing with an Interpretation and only discussions based on the definition of kennel will be entertained.

Mr. Thomas swore in Alison Bolshoi of 122 Hope Road, Blirstown, who advised that she lives directly across the road from the Berberians. She testified that they were consulted about the building, and they were advised of the use for the dogs. She had no problem with it and she advised that they have never heard the dogs. She believes she is the closest neighbor.

Mr. Thomas swore in Jared Hall of 138 Hope Road who also lives across the street. He has been at the Berberian property multiple times even before the Berberians moved in. He was advised of the Berberians' intentions and what they were going to do with the tennis court and the property. There was nothing deceitful, and he and his wife have had no issues with it.

The meeting was then closed to the Public.

Mr. Thomas asked both attorneys if there is any information as to the definition in the Township of Blirstown Ordinances related to the term kennel. Mr. Keiling answered no, and Mr. Thomas said that is because there is no definition in the Blirstown Ordinances. Mr. Selvaggi said there is nothing to define a kennel in the Code book, but the word is used four (4) times in reference to the Highway Commercial (HC) Zone. The term kennel is not defined.

Mr. Selvaggi summarized that is really "splitting the hairs". No fee being derived somehow taking this out of the use or the term "kennel" is splitting that hair really thin. I think you have to look at the overall enterprise and say "is this really a residential or agricultural use"? A non-profit operation doesn't mean it isn't a commercial use; e.g. Hackettstown Hospital and Centenary College are not for profit, but they are clearly commercial uses. In this case you have people coming in and out of the property to participate in their activities. You have 17 dogs and you have all the horses. This is not the Gibbs' Farm in Allamuchy. It is clearly a commercial enterprise that should be submitted with a Site Plan as an important factor. The Position Statement is the housing of his family pets (dogs). There are seventeen (17) dogs here. This is not the type of use allowed by the Interpretation. There may be

opportunities for the Board and the applicant to work out a resolution that makes sense given the location, however, it is not a permitted enterprise in the zone.

Mr. Keiling summarized that there is no definition for a kennel. An expert has testified that this is the nomenclature used. If you have seven (7) of your own dogs and built a structure for them, you would call it a kennel and it is not a commercial kennel. The clients' dogs are owned and licensed through the town. If you did away with the hunt club, you would still have the right to keep the dogs at your house. The dogs would be kept in a structure. With regard to the heating and the air conditioning, you have to treat the dogs humanely. The Animal Control Officer for Blairstown has been to the property numerous times. They are not generating income, and you have heard the vet testify to this. If the Ordinance limited the number of dogs, the Berberians would comply but there is none. This is a home for his clients' (the Berberians) animals. They receive no 1099 or K-1. Mr. Keiling believes they should move on to the C Bulk Variance application applied for.

Chairman Sikkes opened the discussion to the Board.

Mrs. Waldron stated that residents who own animals keep them inside their home and do not have seventeen (17) of them outside. The use is part of a private, non-profit business. The dogs are used at a hunt club at both their property and other properties. This is not a personal use.

Mr. Thomas stated that the Board's job is to interpret the activity. The Master Plan needs the term "kennel" to be defined. The law is if there is no definition, you must look to definitions outside Ordinances. The Merriam Webster dictionary defines a kennel as a shelter for a dog, and also indicates an establishment for breeding and boarding dogs. Google says a kennel is a small shelter for dogs and cats. It also goes on to say in Merriam Webster that the purpose of a kennel is for confinement for safety, security, and home training. The fact that there are seventeen (17) dogs that are personally owned by an individual, you can call it a kennel but it is not a kennel, it is merely a group of doghouses. Mr. Keiling believes it is only a kennel if there are business transactions involved. Conversely, Mr. Selvaggi takes the position that a kennel is a kennel, whether or not it is for a business purpose or a personal purpose. The Board needs to determine if the business aspect is relevant. Ms. Ladlee has testified that these are her dogs and she is simply reimbursed as part of the non-profit arrangement. Mr. Selvaggi feels that it is a non-profit business. The only place the term kennel is used in the Blairstown Ordinances is when it involves the Highway Commercial (HC) Zone. Does that imply that a kennel is designed to be for business and therefore you would go down that route or is it not relevant and it is a shelter for dogs for the confinement, safety, and security and an establishment for breeding and boarding. The Board has to determine how to define and the Ordinance doesn't assist you.

Chairman Sikkes stated that the ordinance does not mention that a kennel is a permitted use in the R-5 Zone. Mr. Thomas replied that they are not permitted in the R-5 zone, but they are permitted in the Highway Commercial Zone. Under the general terms of Ordinance interpretation, if something is not permitted, it is therefore prohibited. Mrs. Waldron stated that the nature of a variance is to give relief. When it is a variance, it allows us to work on site plans and to prevent a negative impact, even though we are not at that point. Mr. Thomas confirmed that this application will become a C Bulk or a D Use Variance after the outcome of the Interpretation. There are two (2) decisions to make tonight:

- 1 – Define if the activity taking place is a kennel
- 2 – Is a Kennel permitted in the R-5 Zone?

Chairman Sikkes asked if there were question from the Board and there were none.

Chairman Sikkes asked the Board to make two (2) motions as outlined above. Mr. Thomas reviewed the definitions in the Webster dictionary. Mr. Selvaggi reminded the Board that they are voting as a Zoning Board and Mr. S. Sikkes and Mrs. Waldron will be recused.

Mr. Keller made a motion that the activity is NOT a commercial kennel. Mr. Thomas explained that a "yes" vote is that the activity is NOT a commercial kennel, and a "no" vote is that the activity IS a commercial kennel.

Action: A motion was duly made by Mr. Keller, seconded by Mr. Repasky, that the application was **not** a commercial kennel.

Roll call vote: Green, Keller, Mach, Mott, and J. Sikkes – yes. Murray and Repasky – no. Recused – S. Sikkes, Waldron. Absent – Mohr.

Mr. Thomas then asked the Board to make a motion as to whether the activity is a kennel. Mr. Thomas explained that a "yes" vote is that the activity IS a kennel, and a "no" vote is that the activity is NOT a kennel.

Action: A motion was duly made by Mrs. Murray, seconded by Chairman Sikkes, that the activity **IS** a kennel. Roll call vote: Green, Keller, Mach, Murray, Repasky, Mott, and J. Sikkes – yes. Recused – S. Sikkes, Waldron. Absent – Mohr.

Mr. Thomas then asked the Board to decide if a kennel is a permitted / accessory use in the R-5 Residential Zone.

Chairman Sikkes asked for a motion from the Board.

Action: A motion was duly made by Mrs. Murray, seconded by Mrs. Green, that kennels are **NOT** a permitted use in the R-5 Residential Zone.

Roll call vote: Green, Keller, Murray, Repasky, and J. Sikkes – yes. Mach and Mott – no. Recused – S. Sikkes, Waldron. Absent – Mohr.

This vote necessitates that the Berberians reapply for a D Use Variance with the appropriate Notice.

LB 09-19 Klazina DeVoogt, Block 1603, Lot 5.08, 48 Mt. Hermon Road, C Bulk Variance

Mr. Kevin Benbrook introduced himself, representing the applicant. He explained that Mrs. DeVoogt has passed away at the age of 77, while her application was pending. The Board expressed their sympathy. Mr. Benbrook has her son-in-law present who was the Power of Attorney and Executor of the Estate. The applicant is now the Estate which he will amend. Notice has been completed.

Mr. Thomas swore in John Guarino of 1 St. John's Drive, Far Hills, New Jersey. Mr. Benbrook explained that Mr. and Mrs. DeVoogt purchased the lot in 1968 from Herman Shotwell and his wife, and it is 1.2+ acres. Waivers were granted at the Completeness meeting. The property is larger than the minimum lot size as it was grandfathered when the R-5 zoning came into effect, and the lot meets all requirements except that the frontage does not meet the minimum of 150 feet (it has 130 feet). They are requesting a bulk variance. Nobody is living there and Mrs. DeVoogt wanted to list the property for sale. Without bulk variance relief, it will not be a buildable lot and sellable. The lots on both sides are the same size and part of the same subdivision. They are asking for relief of twenty (20) feet frontage.

Mr. Guarino stated that his in-laws purchased the property in the late 1960's and were living in Essex County. They thought they would eventually build / move to Blairstown for more open space, but they never did. Mr. DeVoogt passed away about seven (7) years ago so Mrs. DeVoogt inherited the property. Mrs. DeVoogt had said nobody else in the family wants the property, so they are selling it. The realtor was unsure if it was a buildable lot, and on checking, the Zoning Official said they would need a variance. Unfortunately, Mrs. DeVoogt passed away before obtaining the variance.

Mr. Thomas stated the survey shows the lot and its width, but is it a vacant lot, and Mr. Guarino confirmed. Mr. Thomas asked what is on the northerly and southerly sides, and Mr. Guarino stated that there are two residences.

Mrs. Waldron asked if the adjacent properties are basically the same size, and Mr. Benbrook said the survey doesn't extend that far, but he checked with Mr. Rich Motyka, Tax Assessor, and they have a similar line of sight. Mr. Benbrook answered that the minimum lot depth and minimum side yard, etc. would all be met and could certainly be conditions of approval. Mr. Guarino stated there have been no changes on the property to change the configuration since it was purchased in 1968 as 1.25 acres and is still undeveloped.

Mr. Thomas asked how far it is on each side from the existing residences and how close is the nearest building / accessory building. Mr. Guarino did not know but visually the property lines are not that close. Mr. Thomas asked if any attempt had been made to contact the neighbors to obtain the additional twenty (20 feet). Mr. Benbrook answered that this would just move the nonconformity from one lot to another lot.

Mr. Benbrook summarized the property is in the R-5 Residential Zone and they are not asking for anything that is not residential. The lot has been recognized as a buildable lot by the Township. Mr. Rich Motyka, Blairstown Tax Assessor, advised that he had made a slight adjustment on the property tax due to its smaller size. Mr. Rodman then handed out photos of the property that he had taken on his site visit (one of the vacant lot and the other adjoining property). Mr. Benbrook reviewed Mr. Rodman's report and continued that if planning testimony was needed, they would do so, but they are trying to keep the costs down for the application.

Chairman Sikkes asked if there were any questions from the Board and there were none. He then asked for questions from the public.

Mr. Thomas swore in Glen Malmgren of 46 Mt. Hermon Road, who lives to the right of the property. Mr. Malmgren has no problem with granting the variance, but he is concerned that the location where a house would be built on this property would destroy his view of the Kittatinny Mountains and the Delaware Water Gap. He would like to put some restrictions on the variance since there is no location of the building yet. There is no perc test yet to determine where the septic will go. His well is right on that side of the house, so their septic field has to be at least 100 feet away from his well. All this affects the layout of the lot, and he has no problem if the Board grants them that it is a buildable lot. However, if there are additional variances needed, would the applicant need to come before the Board. Mrs. Waldron answered they would. He would also like to protect his view of the lot, so he would want a restriction that all the houses remain in line to preserve his views. He would also like a restriction on any accessory building in the rear yard as he has found out that an accessory structure could be 25 feet high which would destroy his view. A smaller accessory building like a garage for a tractor would be fine. He is concerned that a builder could come in and put up a two and ½ story house in the rear of the yard and destroy his view of the Gap. Mrs. Waldron stated that most houses run along the same path, side by side.

Mr. Thomas asked if he owns the property to the right which is Lot 10, and was advised by Chairman Sikkes that this is the former Pagano property. Mr. Thomas asked Mr. Malmgren if he could sell the twenty (20) foot difference to them, and he replied that he cannot as he has just 150 feet and the neighbor has 147 feet. Mr. Thomas asked Mr. Malmgren if he had offered to buy the DeVoogt property and he answered that he was not in a position to do so.

Mr. Benbrook advised that they would secure Warren County Board of Health for the septic, and that well distances would be honored. They would also follow the lot coverage restriction on accessory structures and they do not want to go beyond that which would hamper the salability. The house will be in the same general line of sight. Mr. Malmgren stated that he wants to ensure they are in the same line of sight. It is all slate there so this will determine where the septic and well are located and where the building envelope will be. His concern is this will impede his view. Mrs. Waldron stated that forcing a purchaser to build a house according not only to septic/well requirements, but also specifically impeding the neighbor's view could make the property worthless.

Mr. Thomas reiterated that if a variance were required that the applicant would have to come before the Board and Notice would be provided to Mr. Malmgren.

Chairman Sikkes closed the meeting to the Public.

Mr. Thomas explained that the Board is being asked to grant a C Bulk Variance for a twenty (20) foot deficiency in lot frontage along Mt. Hermon Road. Mr. Thomas said the Board cannot address Mr. Malmgren's concern because if the view is obstructed, Mr. Malmgren has the right to purchase the property and then the view becomes his view. There is no additional property for the applicant to purchase as it would result in a deficiency in either of those adjoining lots. This is a basis for the grant of the approval based on the C1 criteria. There does not appear to be any substantial negative impact. The conditions should be the payment of appropriate fees and taxes.

Chairman Sikkes asked for a motion to approve the C Bulk Variance.

Action: A motion was duly made by Mrs. Waldron, seconded by Mrs. Murray, to approve the C Bulk Variance. Roll call vote: Green, Keller, Mach, Murray, Repasky, S. Sikkes, Waldron, Mott, and J. Sikkes – yes. Absent – Mohr.

CORRESPONDENCE: There were no questions or comments on the correspondence.

September 23, 2019 Notice of Violation / Stop Work Order from David Diehl, Zoning Officer, to Binnie Dippel, 132 Union Brick Road, Blairstown for violating soil fill placement without permits or approval. Due to the amount of development, a Site Plan will also be required prior to any approval.

September 23, 2019 letter from Board Attorney Roger Thomas to the Land Use Board stating the Ordinance of the Township of Blairstown does not contain any Notice requirement for an Interpretation (regarding the Berberian application)

September 24, 2019 letter from the Warren County Planning Board to the Land Use Board re Conditional Approval for Blair Academy (Steckel House). Ted Rodman's office is handling.

September 26, 2019 Certified Mail Notification to Municipal Clerk and Land Use Board Secretary of Blairstown from William and Susanne Laban for their Request for Site Specific Agriculture Management Practice Determination. The Labans are requesting relief from the Township of Blairstown Ordinance to allow a non-permitted structure (shipping container) to remain on their farm for farm-related use. Also attached is a copy of the July 25, 2019 Resolution 19-11 Land Use Board Minutes – 10/21/2019

from the Warren County Agricultural Board determining that the Laban property, Block 1601, Lot 11, is a commercial farm.

September 28, 2019 – Barbara Green was awarded the NSDAR Community Service Award at the Warren County Branch Library in Belvidere.

September 30, 2019 Notice of Violation from David Diehl, Zoning Officer, to 53 Warren County, LLC (Gary Wishnia, Blirstown Diner) noting that Mr. Wishnia will need NJDEP and NJDOT approval prior to any Land Use Board application.

September 30, 2019 Letter from David B. Simmons (Harold E. Pellow & Assoc.) to Mr. Richard Keiling, Attorney At Law, stating that his firm is submitting a proposal to Mr. Gary Wishnia (Blirstown Diner) for the preparation of a Minor Site Plan to present to the Land Use Board on October 21, 2019.

October 7, 2019 email from Crown Castle advising they will start construction on the replacement telecom tower at 155 Route 94 either the week of October 7 or 14, 2019.

NJ Planner – July / August 2019

OTHER BUSINESS:

Master Plan for 2020 – A planning draft 2020 Master Plan Reexamination has been provided to all LUB Members as a basis/direction to complete this report.

Chairman Sikkes asked everyone on the Board to continue working on the Master Plan and to join a subcommittee. Mrs. Waldron felt that the Board should discuss the definition of a kennel (and what is commercial) and also to limit the number of dogs as part of the Master Plan work. Other municipalities have put limitations in place, and realtors have mentioned that they are coming to Blirstown because they could not get what clients wanted in neighboring municipalities. Chairman Sikkes suggested that Mrs. Waldron meet with David Diehl, Zoning Officer.

Mr. Mott asked if there was any action on the October 17, 2019 letter from Ms. Ursula Leo to the Board Secretary requesting a six (6) month extension to their Conditions of Approval due to the health of Mrs. Darst. Mr. Thomas stated that the Board could either grant the request or they could ask for more information by having Ms. Leo come in to the next meeting if appropriate. Mrs. Waldron stated that this situation has gone on for a long time and she would like Ms. Leo to address the Board and get this off the docket. Mr. Thomas answered that he would contact Ms. Leo and have her testify for the November 18, 2019 Land Use Board Meeting. The Board agreed with this outcome.

NEW BUSINESS: None

PUBLIC PORTION: None

VOUCHERS: Professional services rendered.

Action: A motion was duly made by Mr. Keller, seconded by Mrs. Green, to approve the Vouchers.
Roll call vote: Green, Keller, Mach, Murray, Repasky, S. Sikkes, Waldron, Mott, Talley, Baker, and J. Sikkes – yes.
Absent – Mohr.

ADJOURNMENT:

Chairman Sikkes asked the Board for a motion to adjourn.

Action: Upon a motion duly made by Mr. Keller, seconded by Mrs. Green, and unanimously carried, the meeting was adjourned at 9:45 p.m.

Respectfully submitted,

Linda J. Grohs, Board Secretary