



## MINUTES MERCHANTVILLE JOINT LAND USE BOARD

Tuesday, August 11, 2020, 7:30pm

Public Meeting Being Held by Zoom Video and/or Teleconference

<https://zoom.us/join> or by phone: (929) 436 2866 US or (301) 715-8592;

**Meeting ID: 860 2375 3447; Passcode: 518846**

1. **CALL TO ORDER.** The meeting started at approximately 7:39pm. The Chairman apologized for the technical difficulties he encountered and asked for Mr. Madden's assistance in starting the meeting. The pledge of allegiance was conducted.
2. **OPEN PUBLIC MEETINGS ACT.** Mr. Madden explained the ways that the notice has been provide in accordance with the Open Public Meetings Act.
3. **ROLL CALL.** Ms. Wuebker called the roll.

<u>Class IV</u>	<u>Class I</u>	<u>Class IV</u>	<u>Class IV</u>	<u>Class IV*</u>	<u>Class IV</u>	<u>Class IV</u>	<u>Class IV</u>	<u>Class III</u>	<u>Class II</u>	<u>Class IV*</u>
Brennan	DeSimone	Fiume	Lamney	Lehman	Licata	Stewart	Uricchio	Woods		
X		X	X	X	X	X	X	X		

Mr. Madden advised that if any members of the public are in attendance for the Potts application it is not being heard this evening. It will be heard on August 25, 2020 at 7:30pm and explained how persons can access that Zoom meeting. The Board proceeded to hear new business, prior to discussing old business matters.

#### 4. **NEW BUSINESS**

- JLUB # 2020-3, Patrick McIlhenny, Jr., 213 Glenwood Avenue (Block 43.03, Lot 7)  
Application for Variance for Oversized Accessory Structure: 10' x 10' storage shed with 10' x 10' attached overhang roof

Mr. Patrick McIlhenny and Mr. Jeff Hanson were sworn in to provide testimony. Mr. Madden advised that as an initial matter, there are some submission waivers being requested, including a survey. In order to hear the application the Board would need to grant that waiver. He asked the applicant to explain the situation and why a survey is not being submitted.

The Applicant went through his prepared opening statement. He explained that he is seeking a variance for the shed with overhang structure and has submitted photos to show the shed's placement. The shed is beneficial to his family. He is the only house on the block that does not have a driveway or a garage. When he built the overhang, he unknowingly violated the zoning ordinance and hopes the Board will forgive his error when considering his application.

As for the survey, he spoke with the Engineer about a month ago and didn't think one was necessary, otherwise he would've provided one. He submitted a sketch of the property and photos with the application that shows placement of the shed in the back corner of the property.<sup>1</sup> He is willing to get a

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<sup>1</sup>Board member Lamney dropped off the Zoom videoconference meeting around this time; he experienced power outages due to a storm event.

survey if need be, but he would like to know the outcome prior to getting the survey because he doesn't want to spend \$500-\$700 for survey if ultimately have to remove the shed structure anyway. He explained that he determined that the shed is 2' 10" from rear property line based on using a string line from a pin that was located between the two properties in a tree. He also stated he is willing to move the shed so it complies with the required setbacks if that becomes an issue.

Mr. Hanson explained that when he prepared his review letter the original application only sought a variance for an oversized accessory structure. The Applicant amended his application with a narrative that explained the need for additional variances that have come to light. He explained that it is his understanding that when Mr. McIlhenny moved into the property there was a field of bamboo between his house and the neighbor's house that the applicant removed;

There was discussion back and forth with Mr. Madden, Mr. Hanson, and the applicant regarding the variances needed. Four variances are needed in total: oversized accessory structure, 2'10" setback variance from rear property line when 3' is required, 5'5" setback variance from side property line when 6' is required, and 5'6" fence height variance, where only 4' is allowed. Board member Urichhio shared Mr. McIlhenny's hand-drawing of the property from the application package and the photographs of the backyard on the screen for members to see exhibits.

Mr. McIlhenny explained the background of the fence that he replaced about 4 years ago between the rear yards of the two properties. He rented a backhoe to clear bamboo behind the neighbor's garage and his property. He put up two sections of shadow box style fence with a small return to the neighbor's rear garage. It replaced the old beat up fence that was there. The fence is technically on the neighbor's property - about a foot or two onto her property, which was agreed to by the neighbor for maintenance purposes. As soon as this matter is resolved, he is going to move the fence so it will be on his property. Mr. Madden advised the Board that as a technical matter, if a fence isn't located on Mr. McIlhenny's property, the Board can't rule on it. Mr. McIlhenny responded that the fence will no longer be on the neighbor's property. He is going to move it so it will run the full length of the rear property line.

Board member Stewart shared a photograph of the entire backyard was shared on the screen. Mr. McIlhenny said the perspective is from the upstairs hallway window looking out onto the yard.

There was a discussion about the original zoning permit application, which indicated compliance with the minimum required setbacks. Mr. McIlhenny said he didn't realize the non-compliance at the time. There was a discussion about the fence height. Mr. McIlhenny indicated he is willing to replace the fence with a 4' high fence if that is going to be an issue.

Ms. Wuebker suggested the Board make a decision about the checklist items. The Board should consider making a motion whether they want to see a survey or whether feel there is enough information to make a decision. There are three waiver items, survey, architectural plans. There was a discussion about 4 variances related to the shed, but Mr. McIlhenny indicated that he can move the shed to comply with setbacks and he can comply with the 4' height for fence if needed, so the Board would not need to consider 4 variances if that is more comfortable for the Board to consider granting approval for the oversized structure.

Board members discussed that Mr. Lammey was no longer showing as participating in the meeting.

Chairman Brennan is confused by the application even though there are photos; he isn't clear on the distance of the shed currently from the property line since the fence isn't on Mr. McIlhenny's property and the side setback of the shed to side property line looks closer than 5'5". He is not comfortable

trying to decide this application without a current survey. There are also two different numbers in the application for the size of the shed.

Mr. McIlhenny stated he has been working with Ms. Wuebker over past 12 months on this matter due to his doing. He is living paycheck to paycheck and has a one year old at home. Then there was Covid. He is afraid to put out money for an expensive survey if Board is going to rule he has to remove it anyway. If Board is leaning in right direction, he will get a survey and come back. If the Board tells him where they want it, he will move it there. He will seek the survey after the fact. He and his wife haven't been able to find a survey in their records or with the title company. Mr. Madden advised that he cannot use surrounding property surveys. The survey has to be of the subject site.

Ms. Wuebker asked Mr. McIlhenny if would be agreeable to dropping the rear yard and side yard setback variance requests and the Board then would just have to rule on the oversized structure and the height of the fence. Any approval would be conditioned upon you getting a survey and the shed and overhang would need to be moved to comply with the minimum setback requirements. He said yes, that is what he has been trying to indicate to the Board in his testimony thus far. The Board has photos of what it looks like. She noted there would also be one de minimus variance for the building coverage. It's only over by a very small amount, .3%.

Mr. Hanson and Ms. Wuebker discussed the lot coverage, whether the lot size is 5600 or 6000 (40 x 150) square feet. 23% vs 25.3% so Mr. Hanson believes he does not need a variance for building coverage. There was a discussion about how the lot coverage was determined. Ms. Wuebker indicated that these figures were carry overs from the original zoning permit application that were calculated using the Tax Assessor's Field card to determine building coverage. She often uses those records to verify building coverage because she tends to get more complete information. Sometimes things are left off of zoning applications. Mr. McIlhenny calculated the walkways, and there is no driveway and no garage. He is way under for total lot coverage.

This shed means a lot to him and his family. He built it with his dad. There are photos with him and his baby son working it. He got a nail gun for Christmas, it's a storage shed for tools to be brought in from car so don't get stolen, it's storage for Christmas ornaments, etc. It's not finished at this point. He stopped working on it when he wasn't sure if going to have to move it or remove it. He provided a letter to Mr. Hanson of all the things he's going to do – gutters, etc. He's going to wrap it in siding to match the house. There is no electric at the shed at this time. There was a tv at one point that he ran with an extension cord. The purpose of the overhang is work space, he does wood working projects for his wife. He originally wanted to have electric, but at this point he doesn't if it's going to complicate this application.

(The Applicant experienced a power outage and was dropped from the meeting)

Ms. Wuebker advised that if Board ultimately approves the application, he will still need to get permits and inspections from the Construction Office. He didn't need building permit for the shed, but once he added the roofed overhang, it required building permits and any electricity will also require going to the Construction Official.

There was a discussion by the Chair that he thinks he needs a survey. Even if ultimately, the structure is just scaled back to a shed, the applicant needs to know where the property line is definitively to ensure meeting requirements.

(Mr. McIlhenny came back into the Zoom meeting). He recapped his application.

Mr. Fiume asked if there is a drainage plan. Mr. McIlhenny said he is going to divert stormwater with gutters away from it towards the inner part of the lot.

There was a discussion about what the measure of sideyard setback is to the shed overhang. It will be moot though because he will move it so meets setback requirement.

Mr. Uricchio asked if there was a foundation. Mr. McIlhenny said it is sitting on concrete blocks on the shed side and then concrete sonotubes on the overhang. He could easily move it. He could cut the 4 x 4s off at the concrete and slide it over and re-anchor the 4 x 4s there holding the roof up.

Chairman Brennan said he can't guarantee that if he gets a survey how he is going to vote from his perspective. He is not comfortable voting until he has a survey. Board members discussed that they agree they want to see a survey of existing conditions because they are not comfortable making a decision on the matter until then. The Chair explained that it's not a matter of pleasing the Board, but rather ensure compliance with the ordinances and granting variances where justified.

(Mr. Lamme is off the zoom meeting due to a power surge)

A member of the public requested to speak. Mike Callahan, who lives at 214 Glenwood Avenue was sworn in. He has lived in Merchantville since 1971. He lives across the street from the Applicant, who has fixed up this property; it was previously vacant and broken into several times. He has been listening to the meeting. The street has been flooding and they keep getting promises that never get resolved. The town is focusing all of this effort into scrutinizing this shed. He wishes the same amount of effort would be put into things that matter in the town, such as the flooding on Glenwood Avenue. He understands the need for ordinances and why this requires a variance; however, here we have a man who is willing to bend over backwards to try and save something that is making his house and my home more valuable. If he can't get the survey from his title company, you're asking him to pay a couple of hundred dollars for it. A lot of us are out of work. He thinks there should be some consideration for him to try and help him out.

The Chairman asked if there was anyone else from the public who would like to speak. Greg Hample introduced himself as a member of the public; he is a potential future resident and wanted to get a feel for the town. He is not here to provide input on this application. Dorothy Foley, who lives at 210 Westminster Avenue was sworn in. She is here to speak on the Sustainable Jersey agenda item. There were no other members of the public here to speak on this application.

Mr. Uricchio made a motion that the application is incomplete without a survey at this point, which was seconded by Ms. Stewart. The Chairman asked if there was any discussion. Mr. Woods wanted to have a discussion, but was experiencing technical difficulties due to the storm.

(There was a brief recess while waiting for Mr. Woods to return to the zoom call. Mr. Lamme got back on the Zoom meeting).

When Mr. Woods returned, he stated while it's hard to understand what they are considering without seeing the survey and seeing the dimensions, he would feel comfortable approving the structure if the applicant were to move it 6' from the existing fence lines that are there. Mr. Brennan and Mr. Hanson said he'd still need a survey at some point to determine if meeting setbacks. Mr. McIlhenny said he is willing to get a survey. He'll move the fence and do whatever need be in order to keep the structure in order to eliminate any confusion and to do what the code states. Ms. Lehman asked Mr. Hanson if he is going to need a survey no matter what and he responded yes, he will need a survey to show that it complies.

Mr. Lamme advised that he has been listening and could hear the discussion via phone, but did not get on until the neighbor gave his statement; he isn't sure he is eligible to vote.

Ms. Lehman asked if the applicant moved it 6' from the property lines would he be compliant. Ms. Wuebker advised the zoning requirement is 3' from the rear property line and 6' from the side property line. There was a discussion of whether the setback needed to be from the structure or the eave of the roof. The Applicant stated he will move it from the eave of the roof to alleviate any concern. Ms. Wuebker would need to look at ordinance, but since applicant is willing to move to the eave of the roof, no longer an issue. The Chair recapped the concessions that the applicant is willing to make (setbacks and reduced fence height), leaving only the oversized shed.

Mr. Madden advised that the Board may want to consider larger setbacks than the minimum required, given the double size of the accessory structure. Ms. Wuebker said she wanted to give overall picture - in this residential zone a house can be built 6' from the side property line. The applicant explained the nature of surrounding structures; his neighbor behind him has a 30 x 30 cement structure that looks like it's going to fall down; there is a shed abutting his property line to the right; there are 6' fences along four property lines below him. A Board member advised that is why the Board is doing this – they are trying to prevent those types of things.

The Applicant says he doesn't want to prolong this over next couple of months; he will just cut the roof off so he can enjoy his property so it will be way within what is allowed without the survey. He is afraid that if come to the Board the following month, there is still going to be the same confusion, even though we all know where it is. There is photo of it. It's in the back corner of the property, tucked next to two other sheds. There was a discussion about the survey requirement between Mr. Hanson and the applicant and whether there was a misunderstanding. The Chairman said the Board is trying to find a way to be accommodating and still work within the rules and the applicant would want the Board to do that if he was the neighbor. If he gets the survey, the Board can make a decision at the next meeting in two weeks. He thinks the Board will be ok with it.

Mr. Madden recapped the motion to deem the application in complete for lack of a survey. Board members voted as follows:

<u>Class IV</u>	<u>Class I</u>	<u>Class IV</u>	<u>Class IV</u>	<u>Class IV*</u>	<u>Class IV</u>	<u>Class IV</u>	<u>Class IV</u>	<u>Class III</u>	<u>Class II</u>	<u>Class IV*</u>
Brennan	DeSimone	Fiume	Lamme	Lehman	Licata	Stewart	Uricchio	Woods		
Yes		Yes	Abstain	Yes	Yes	Yes	Yes	Yes		

Mr. Madden advised that the matter will be continued to the August 25<sup>th</sup> meeting; no new notice will be required. If Mr. McIlhenny runs into any complications with the survey, you can contact his office and the Board will make a similar announcement at the next meeting. The Board confirmed that he should not touch move fence or shed in the interim.

- Sustainability Land Use Pledge – Sustainable Jersey Certification

Ms. Foley was previously sworn in. Ms. Wuebker explained that Borough Council adopted a Sustainable Land Use Pledge in February as part of the Borough's desire to seek certification with Sustainable Jersey. It is a non-profit organization that certifies municipalities; you get certification by accumulating a certain amount of points and it makes you eligible for certain grants. Ms. Wuebker thanked Dorothy Foley, Joan Brennan, and Cindy Hertneck who have been instrumental in helping us to get certification. The application was sent back to the Borough, seeking additional information on certain matters.



**6. BOARD COMMENTS**

There was a discussion of the sign at corner of Chestnut and Centre Street that it looks good.

**7. ADJOURNMENT**

Ms. Stewart made a motion to adjourn that was seconded by Mr. Uricchio.

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Brennan	DeSimone	Fiume	Lammey	Lehman	Licata	Stewart	Uricchio	Woods		
Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes		

The meeting adjourned at approximately 9:15 pm.