

LIBERTY TOWNSHIP LAND USE BOARD

Great Meadows, NJ 07838

Reorganization Meeting – January 15th, 2025 7:30 p.m.

LIBERTY TOWNSHIP MUNICIPAL BUILDING,

349 Mt. Lake Rd.,

Great Meadows, NJ

1. CALL TO ORDER/FLAG SALUTE
2. STATEMENT OF COMPLIANCE - Sunshine Law
3. ROLL CALL
4. BOARD APPOINTMENTS
Chairman, Vice Chairman
5. OATHS OF OFFICE
Nick Fania, Dan Grover, John Inscho, Steve Makarevich, Doug Wright
6. PROFESSIONAL APPOINTMENTS
Board Attorney, Municipal Planner, Municipal Engineer, Board Administrator
7. RESOLUTIONS
 - a. Meeting dates
 - b. Publication selection – Discussion
 - c. Memorialization of Certificate for Preexisting Nonconforming Use (Block 38, Lot1)
8. MINUTES- November 25th, 2024
9. APPLICATIONS - None
10. NEW BUSINESS
 - a. NJ State Development and Redevelopment Plan Cross-Acceptance Process
 - b. JCP&L Legal Notice for Maintenance Permit
11. BILLS
12. PUBLIC COMMENT
13. ADJOURNMENT – (Automatic adjournment at 10:30pm)

Minutes of the Liberty Township Land Use Board

Reorganization Meeting

The meeting was opened at 7:30pm by Richard Schneider who lead the **Flag Salute** and read the open public meetings statement.

Attendance: Nick Fania, David Snyder, Daniel Grover, Steve Makarevich and Eric Tibak were present. Also present were Board Attorney, Richard Schneider and Board Administrator, Amber Gratacos.

Reorganization:

Mr. Richard Schneider called for nominations for the *Chair* position. Mr. Daniel Grover nominated Eric Tibak which was seconded by Mr. David Snyder and passed unanimously.

Mr. Eric Tibak then called for nomination for the *Vice Chair* position. Mr. Dan Grover nominated Kevin Wulf which was seconded by Mr. David Snyder and passed unanimously.

Oaths of Office:

Mr. Schneider administered the oaths of office to Nick Fania (2-year term), Daniel Grover (1 year term) and Steve Makarevich (4-year term).

Professional Appointments:

Mr. Tibak introduced the proposed contract and corresponding resolution for Board Attorney, Richard Schneider, to be appointed for the year 2025. Mr. Eric Tibak motioned to accept the contract with a second from Mr. Nick Fania and it was passed unanimously.

Mr. Tibak then introduced the proposed contract and corresponding resolution for Board Planner, Eric Snyder, to be appointed for the year 2025. Mr. Dan Grover motioned to accept the contract with a second from Mr. Steve Makarevich and it was passed unanimously.

Mr. Tibak finally introduced the resolution to appoint CP Engineers LLC as the Board Engineer for the year 2025 subject to receipt of an acceptable form of contract. Mr. Dan Grover motioned to accept with a second from Mr. Nick Fania and it was passed unanimously.

Meeting dates and publication:

The board reviewed the 2025 Land Use Board meeting schedule and publication listed as The Express Times online service. Mr. Eric Tibak motioned to accept the dates and publication which was seconded by Mr. Dan Grover and it was passed unanimously. Some discussion ensued between the board and Mr. Schneider regarding the future of publications that are going out of physical print and posting Board news online.

Minutes:

A motion was made for the minutes from the November 25th, 2024 meeting to be accepted as written by Mr. Nick Fania, seconded by Mr. Dave Snyder and passed with an abstention from Mr. Steve Makarevich.

Memorializing Resolution:

Mr. Schneider introduced the Memorializing Resolution for a certification of preexisting nonconforming use for Luckson Etienne, 1 Walnut Drive, Block 38 Lot 1. He pointed out a single issue with the resolution as it was written being that it defined the property as having 5, single room dwelling units. The board discussed the evidence from the previous hearings in order to determine how many bedrooms the certificate would be appropriate for. Mr. Alan Lowcher, the applicant's attorney, directed the board to exhibit (A-3) from the previous hearing, the tax assessor records, to declare the building as having 11 bedrooms. There was minor discussion amongst the board and attorney about how to define the 11 bedrooms without ability of expansion and contingent on determination of the Board of Health. Mr. Schneider then summarized the proposed amendments to be made to the resolution. The resolution was moved as amended by Mr. Dave Snyder with a second by Mr. Nick Fania, and was passed with an abstention from Mr. Steve Makarevich.

**RESOLUTION MEMORIALIZING A
CERTIFICATION OF PREEXISTING
NONCONFORMING USE TO THE
APPLICANT, LUCKSON ETIENNE,
RELATING TO PROPERTY LOCATED
AT 1 WALNUT DRIVE AND DESIGNATED AS LOT 1, BLOCK 38 ON THE OFFICIAL TAX MAPS OF THE
TOWNSHIP OF LIBERTY**

WHEREAS, Luckson Etienne ("Applicant") has applied to the Liberty Township Land Use Board ("Board") for a certification of preexisting nonconforming use to use the subject property as referenced above as a multi-family dwelling; and

WHEREAS, the Board conducted public hearings on October 16, 2024, and November 25, 2024 in accordance with the jurisdictional requirements of the Liberty Township Land Development Ordinance and the New Jersey Municipal Land Use Law; and

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

1. The Applicant was represented by Alan Y. Lowcher, Esq., and presented the testimony of the following witnesses:
 - a. Jacob Pence – whose qualifications were accepted as an expert witness in the field of title examinations.
 - b. John Madden, P.P. – whose qualifications were accepted as an expert witness in the field of professional planning.
 - c. Luckson Etienne – the Applicant.
2. The application before the Board, as originally filed, sought a certification of preexisting nonconforming use that at the subject property constituted a preexisting nonconforming use for six individual apartment units pursuant to Section 105-30 of the Liberty Township Land Development Ordinance. This

section of the Liberty Township Land Development Ordinance, in pertinent part, allows any lawful nonconforming use which existed on the date of the adoption of the Liberty Township Land Development Ordinance to be continued subject to certain conditions. Based on the Applicant's original application submission, the application sought a certification of preexisting nonconforming use based on the above-referenced section of the Liberty Township Land Development Ordinance for six individual dwelling units, which was thereafter amended at the conclusion of the public hearing process to a request for a certification as to five residential dwelling units.

3. *As testified to during the public hearing and by reference to a boundary and topographic survey prepared by E&LP dated September 1, 2022, the subject property contains 15,066 square feet (0.346 acres) and is presently improved by a two-story wood building. Attached to the dwelling is a wood deck, and the building is otherwise surrounded by some wood fencing, all as is more particularly depicted on the survey referenced above, as well as various photographs contained within the application submission.*
4. *Mr. Pence, in his capacity as a recognized title expert reviewed the title history of the subject property. Mr. Pence placed initial significance on the title history, which reflects a 1947 deed referring to the subject property as the "Cabins". The Board ultimately finds that such generic reference is largely inconsequential to the ultimate determination of whether the subject property constitutes a valid preexisting nonconforming use for multifamily use. Mr. Pence's testimony and related documentary submissions did reflect that the current Applicant took title as the result of a foreclosure on April 29, 2021, by virtue of a deed from US Bank Trust N.A. That grantor had previously obtained title by virtue of a Sheriff Sale pursuant to a deed in favor of US Bank Trust dated February 15, 2018.*
5. *Mr. Madden testified largely not in his capacity as a professional planner, but more specifically as to the history of the subject property based on his extensive review of government records as it specifically relates to when the subject property was initially established for multi-family use, and the reports of various governmental agencies, which extensively established as ultimately found by the board, the use of the subject property for multi-family use. Of particular relevance for purposes of adjudication of the application is the fact that the 1940 census did not reveal any apartments or multi-family use and appears to indicate that the property was occupied by Lewis and Cora Buckenmyer and their three sons and father. However, the 1950 census appears to establish that the building contains six apartment units. The relevance of the 1950 census is that to the extent that it establishes multi-family use (six apartment units), it does so in a timeframe which predates the adoption by Liberty of its Land Development Ordinance, which appears to have been established in 1965. As a matter of law, in order for a particular use to constitute a valid preexisting nonconforming use, the prevailing law provides that the use must be lawful and valid at its inception. The 1950 census purporting to establish the existence of six apartment units is in*

a timeframe in advance of Liberty Township's adoption of a zoning ordinance, satisfies the important legal requirement that the use was lawful at its inception. In addition to the opinion rendered by Mr. Madden that the 1950 census establishes the use of the subject property for multi-family use, Mr. Madden supplemented that documentary submission by further review of documents from the New Jersey Department of Community Affairs and the New Jersey Bureau of Housing Inspection. Documentation from the New Jersey Department of Community Affairs, Division of Codes and Standards appears to reflect that at various timeframes, namely 2003, 2008, 2014, 2020, 2021 and 2022, the subject property was referenced as a multiple-dwelling unit. In addition, records from the New Jersey Bureau of Housing Inspection for the calendar years 2003, 2008, 2013 and 2020 reference a total of six multi-family units or apartments. Furthermore, tax assessment records (Exhibit A-3) obtained from the Township of Liberty appears to establish that the Township recognized the subject property as a multi-family dwelling for five units (as distinguishable from the previously cited governmental records establishing six units). In addition to the above, as a matter of law, a multi-family dwelling unit owner must submit a landlord registration statement to the Township. Reference is further made to a correspondence from the Fein Such Law Firm dated April 17, 2018, enclosing a landlord registration form referencing that four of the then six alleged units were currently tenanted.

6. *Between the October and November public hearings, an appointed subcommittee of the Board undertook a site inspection of the subject property for the specific purposes of familiarizing themselves with the physical attributes of the property and specifically as to whether the property maintained the physical attributes of a multi-family dwelling based on number of bedrooms, kitchen facilities and bathrooms. The conclusions of the respective subcommittee members' observations of their site visit were placed on the record at the Board's November 25, 2024 public hearing. It was the conclusion of each of the respective members of the subcommittee that the physical attributes of the property in terms of bedroom units and kitchen and bathroom facilities established a multi-family use, albeit a use that has fallen into a certain significant level of disrepair. The physical attributes of the subject property, in the opinion of those subcommittee members, did not reflect an intent of the Applicant to abandon the multi-family use. In furtherance of those conclusions, Mr. Etienne testified at the November 25, 2024, public hearing. Specific inquiry was made to the Applicant as to what events, if any, had transpired since his having obtained title to the subject property, which would reflect that he did not intend to abandon the multi-family use. Mr. Etienne explained that since his having obtained title to the subject property, he engaged in ongoing communications with Eric Snyder in his capacity as the then Township Planner and Zoning Officer, to which Mr. Snyder required that the Applicant obtain the required certification before engaging in any further activity which would allow use of the subject property for multi-family use. Those discussions and the*

submission of the comprehensive application after the Applicant obtained legal counsel and respective experts in large measure explains the passage of time since the Applicant obtained title to the subject property and filing of the present application.

7. *Applying the above factual findings to applicable law, as a matter of law, the burden of proving the existence of a nonconforming use is upon the party asserting such use, in this case the Applicant. The first inquiry is whether the use, which existed at the time of the adoption of the ordinance was valid at its inception. The Board is able to conclude, based on the testimony specifically of Mr. Madden, as well as the comprehensive documentary submissions he obtained and presented to the Board, that the use here was, in fact, valid as of the date of Liberty Township's adoption of a zoning ordinance and that the use being sought for protection as a nonconforming use represented a multi-family use. Once the Applicant has met its burden of establishing the existence of a valid nonconforming use, the Board must turn its attention to use to the inquiry of whether the use has been abandoned after it was established as a prior valid nonconforming use. The testimony and documentary submissions must generally establish that the use has been consistent from its inception and that there has been no intent to abandon such use. Mere nonuse of a nonconforming right does not constitute abandonment. The Board here finds that there is no intent to abandon, acknowledging that there were obvious delays since the time of the Applicant's ownership attributable to the need to obtain required relief from this Board in order to allow the nonconforming use to continue.*
8. *At the conclusion of the public hearing, the Applicant stipulated that in order to resolve a discrepancy in the documentary submissions as to the number of authorized units established as a preexisting nonconforming use, it would seek approval only for five dwelling units as the preexisting nonconforming use for which relief is sought. The Applicant further acknowledged and stipulated that its right to use the property for five multi-family unit is expressly contingent upon express compliance with all conditions and/or requirements imposed by any governmental agency with jurisdiction, including, but not limited to, the Board of Health.*

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Township of Liberty that the application of Luckson Etienne is hereby approved subject to the following conditions.

1. *The nonconforming use herein granted is limited to that of five dwelling units (not to exceed 11 bedrooms in total), subject to approval of the Board of Health.*
2. *The Applicant agrees to be bound by all stipulations and representations made during the course of the public hearing.*
3. *The approval is subject to the Applicant obtaining any and all required Governmental Approvals from any other outside agency with jurisdiction, including specifically, but not limited to, approval by the Board of Health and NJDEP.*

4. *The approval is subject to the Applicant paying all taxes, fees, and escrows required by the Township of Liberty. The Applicant shall pay any additional fee or escrow deposit that may be due and owing within 30 days of notification or this approval shall be deemed withdrawn.*

Public Comment:

Mr. Ron Stephany, 21 Shades of Death Rd, approached the board about light pollution from a neighboring business on Shades of Death Road. Mr. Stephany presented pictures to the board and Mr. Grover said that the intention of the owner was to install light shields.

New Business:

Mrs. Amber Gratacos described the State Cross Acceptance Redevelopment Plan to the board, no formal action was to be taken. She also explained the JCP&L notice received which described their intent to do equipment maintenance in the area, no formal action was to be taken.

Bills:

A motion was made by Mr. Tibak and seconded by Mr. Grover to pay the board attorney bill for services rendered in November 2024, all voted in favor.

Adjournment:

The meeting was adjourned at 8:07pm.

Respectfully submitted,

Amber Gratacos

Board Administrator