

**FREDON TOWNSHIP LAND USE BOARD
RESOLUTION MEMORIALIZING THE GRANT OF
A DENSITY VARIANCE PURSUANT TO
N.J.S.A. 40:55D-70(d.) (5) AND A BULK VARIANCE
PURSUANT TO N.J.S.A 40:55d-70(c.)
TO APPLICATION NO. 510-2017
WILLIAM AND JANICE HEMBERGER
10 SHADE TREE LANE
(BLOCK 1902, LOT 5.A30)**

WHEREAS, application having been made to the Fredon Township Land Use Board by transmittal letter (from the applicant) dated April 12, 2017, by William and Janice Hemberger, who reside at 10 Shade Tree Lane, Newton (Fredon Township), NJ 07860, to the Fredon Township Land Use Board, seeking the grant of a use (density) variance pursuant to N.J.S.A. 40:55D-70(d.) (5) in order to permit construction of a 20' x 32', with full storage basement, two-room addition constituted of a 20' x 20' family room and a 12' x 20' bedroom/bath, to the rear of the applicants' existing dwelling house, which existing dwelling house has dimensions of 31' x 34' and which is located upon and is commonly known as 10 Shade Tree Lane; and,

WHEREAS, the variance relief applied for is necessitated by the issuance of a Zoning Permit Denial by Arlene Fisher, Fredon Township Zoning Officer, by letter dated April 13, 2017 which provides, in part, as follows:

The Zoning Permit you submitted to permit a 20' x 30' addition to your home requires a use variance because the addition is an expansion of a nonconforming use. This property is located in the R-6 Residential Zone and permitted uses in Fredon Code 550-59 include A. Detached single family residential dwellings...The property your home is located on is a pre-existing, non-conforming use that included multiple seasonal cottages and two year-round dwellings on one lot. The non-conforming use was registered on September 30, 1976 by the Zoning Officer.

WHEREAS, in addition to the completed application form, the applicants having submitted the following:

- An aerial photograph showing the subject property and those adjacent to and in the vicinity thereof.
- A plat, hand-drawn and prepared by the applicants, entitled: *Existing Dwelling Plus Addition within 75' x 125' Lease Area as Confirmed by the Signature of Budd Family Properties, LLC, Property Manager. Now Reincorporated as Budd Properties at Hunts Pond, L.P.*
- A copy of a document entitled: *Land Lease* being between the Budd Family Properties, LLC and William H. Hemberger and Janice E. Hemberger, providing for the applicants to lease, as stated therein: *That certain lot on the northwest shore of Hunts Pond, which is a portion of land owned by Lessor. Said lot is bordered on the northerly side by a lot lease*

to Gary and Bette Cooper. Said lot measures approximately 125' wide by 75' in depth. Said lot is further described as: 10 Shade Tree Lane, Newton, N.J. 07860.

- A copy of a plat (untitled) showing the subject property and the structures located thereon and those contiguous thereto.
- A copy of the Fredon Township Tax Map showing the subject property and those located contiguous to and in the vicinity thereof.
- An architectural plan and elevation (two sheets) prepared by the applicants showing the dimensions and room layout of the proposed addition.

WHEREAS, the applicants having provided proper, timely and adequate notice of the variance application submitted by having provided notice thereof by certified mail, return receipt requested, to all property owners located within 200' of the subject property and to all other agencies and entities entitled to be provided with notice thereof and by having published, once, in the official newspaper of the Township of Fredon, a notice of said application and, accordingly, the Board having determined, based upon the review of proof of serve and proof of publication conducted by its secretary, that it was vested with jurisdiction to hear the application and to take Official Action, as hereinbelow set forth, with respect thereto; and,

WHEREAS, a hearing was held upon the application at the regular meeting of the Board convened on May 15, 2017, at which the applicants appeared, *pro se*, and at which the Board determined the application to be *administratively incomplete* and generally insufficient to render an informed determination thereon and the Board having continued the hearing of the application to the next regular meeting; and,

WHEREAS, at the regular meeting of the Land Use Board convened on June 19, 2017, the applicants' presentation of their application was concluded, as was the Board's administration thereof, and at which Official Action, as hereinbelow set forth, was taken with respect thereto; and,

WHEREAS, as a result of the application made to it, the hearings held thereon at the regular meetings of the Land Use Board convened on May 15, 2017 and June 19, 2017, all as aforesaid, the Board does herewith describe the application particularly as follows and which it does herewith makes the following basic **FINDINGS OF FACT**:

1. The applicants are William and Janice Hemberger, who resides at 10 Shade Tree Lane, Newton (Fredon Township), New Jersey 07860.
2. The property which is the subject of the application and which is owned and occupied by the applicants (the dwelling house, only, the land itself being under lease), is known and designated as Block 1902, Lot 5.A30, on the Fredon Township Tax Map.

3. Block 1902, Lot 5.01, which is the “parent lot” of which the subject property (5.A30) is a portion, contains an area in excess of 50 acres and has located thereon, in addition to the applicants’ dwelling house, several other dwelling houses occupied by third-parties.
4. The applicants propose to construct to the left rear (north designation not shown on any of the plats submitted) an addition having a width of 20 feet and a depth of 32 feet (29 feet with respect to the portion being connected to the existing dwelling house).
5. The subject property is accessed by means of a private driveway connecting with Shade Tree Lane, one of several private roads within the lake community.
6. In response to the Board’s concerns and upon the advice and recommendation of the Board’s engineer and attorney, the applicants prepared a plat of the subject property showing the overall lease lines and which, as per the Lease Agreement with Budd Family Properties, LLC, has overall dimensions of 75 feet by 125 feet.
7. However, the actual location of that (75’ x 125’) leasehold area cannot readily be determined as the applicants do not possess any survey plat, nor was any survey plat of adjoining leasehold lots produced.
8. However, the applicants have designated the following setbacks from the existing dwelling house and proposed addition, which the Board considers to be the “best evidence” available under the circumstances:
 - A setback of 29 feet from an existing (10’ x 18’) shed.
 - A right side yard setback of 20 feet.
 - A left side yard setback of 19 feet, more or less.
 - A left side yard setback from the proposed addition to the leasehold line of 16 feet.
 - A 5 foot rear yard setback from the lease line.
9. The proposed addition will have a width of 20’, a depth of 32’ and will be constituted of two (2) rooms – a 20’ x 20’ family room and a 12’ x 20’ bedroom with bath.

10. In that the applicants' dwelling house, proposed for expansion by construction of the (20' x 32') addition, is one of several dwelling houses located upon one (1) lot (Block 1902, Lot 5.A30) and further given that the subject property is located in the R-6 Residential Zone District wherein the minimum lot size and overall density permitted are far exceeded by the existing improvements (residences, including the applicants' residence), the construction of **any addition to any residence** requires a density variance pursuant to N.J.S.A. 40:55D-70(d)(5) as has been sought.

WHEREAS, as a result of the foregoing basic **FINDINGS OF FACT**, the Fredon Township Land Use Board does herewith make the ultimate **CONCLUSIONS BASED THEREON**:

- a. The use variance sought in this application is made pursuant to the provisions of the Municipal Land Use Law, particularly, N.J.S.A. 40:55D-70(d), which provides that one of the categories of use variances is a *use or principal structure in a district restricted of such use of principal structure*.
- b. N.J.S.A. 40:55D-70(d) vests in the Land Use Board the power to: *In particular cases and for special reasons, grant a variance to allow a departure from regulations pursuant to article 8 of this act*. The foregoing are the so-called *positive criteria* attending use variance applications.
- c. The so-called *negative criteria* which must be satisfied are that: *No variance or other relief may be granted under the terms of this section unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance*.
- d. To be successful and secure the grant of a use variance, an applicant must demonstrate and the Board must find that sufficient and compelling *special reasons* exist. *Special reasons* mean that the granting of the application would have a benefit beyond that confined, exclusively, to the applicant, only.
- e. *Special reasons* mean, generally, that the granting of the application will promote the purposes of the Municipal Land Use Law, the purposes of the Fredon Township Master Plan, the purposes of the Fredon Township Zoning Ordinance or would have some public purpose, public significance or public benefit.

NOW, THEREFORE, BE IT RESOLVED, by the Land Use Board of the Township of Fredon that, as a result of the foregoing basic **FINDINGS OF FACT** and ultimate **CONCLUSIONS BASED THEREON**, the following **OFFICIAL ACTION** is taken with respect thereto:

1. **APPLICATION NO. 510-2017** being the application of **WILLIAM HEMBERGER** and **JANICE HEMBERGER** with respect to property leased by the applicants and upon which their dwelling house is located, said property known and designated as Block 1902, Lot 5.A30, on the Fredon Township Tax Map proposing construction to the left rear of the applicants' dwelling house a 20' x 32' addition constituted of a 20' x 20' family room and a 12' x 20' bedroom with bath and a **BULK VARIANCE** with respect to an accessory structure (storage shed) in front of the principal structure, **BE** and same is herewith **GRANTED**.
2. The foregoing Official Action is taken, subject to full compliance by the applicants with the following terms and conditions:
 - a. The applicants shall provide proof of the payment of all real estate taxes and assessments due on the subject property through the second quarter of 2017.
 - b. The applicants shall undertake construction of the proposed addition in precise compliance with the plats submitted to, reviewed and approved by the Board, **any deviations therefrom** requiring resubmission to, re-review and reapproval by the Board.
 - c. The applicant shall reimburse the Township of Fredon for the professional services (legal and engineering) rendered in the administration of this application, including the cost of preparation of this memorializing Resolution.
 - d. The foregoing Official Action is limited, exclusively, to the portion of Block 1902, Lot 5.A30 (the "parent lot") portion known as Block 1902, Lot 5.A30 and shall not extend, nor be construed to extend, to any other portion of Lot 5.A30.

FREDON TOWNSHIP LAND USE BOARD



GUY MASI, CHAIRMAN



SUZANNE BOLAND, SECRETARY

I hereby certify the foregoing Resolution to be a true and complete memorialization of the Official Action taken by the Fredon Township Planning Board at its regular meeting held on June 19, 2017, by a motion and vote as follows:

MOTION TO GRANT A DENSITY VARIANCE PURUSANT TO N.J.S.A 40:55D-70(d.) (5), TO APPLICATION NO. 510- 2017 – , WILLIAM AND JANICE HEMBERGER WITH RESPECT TO BLOCK 1902, LOT 5.01.

IN FAVOR: Chairman Masi, Mr. Andrews, Mr. Boland, Mrs. Prommel,
Mr. Lazzaro, Mr. Rome.

OPPOSED: Mrs. Wilcox.

ABSTAIN: None.

ATTEST:



SUZANNE BOLAND, SECRETARY

Dated: July 19, 2017

FLUB: HembergerGrantDensityVarianceReso

TOWNSHIP OF FREDON
ORDINANCE 2017-08

AN ORDINANCE TO AMEND LAND USE PROCEDURES OF THE CODE OF THE
TOWNSHIP OF FREDON

WHEREAS, the unified municipal Planning Board established in Section 45-2 of the Code of the Township of Fredon shall hereafter be known as the Land Use Board in the Code of

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Fredon as follows:

All references in the Code of the Township of Fredon to the municipal Planning Board shall be replaced with Land Use Board.

CERTIFICATION

I hereby certify that the above is a true copy of an Ordinance passed second reading and was adopted by the Fredon Township Committee at a Regular Meeting of that body held on July 27, 2017.

Joanne Charner RMC
Municipal Clerk

**FREDON TOWNSHIP LAND USE BOARD
RESOLUTION MEMORIALIZING THE GRANT OF
A *BULK* VARIANCE PURSUANT TO
N.J.S.A. 40:55D-70(c.), (1)
WITH RESPECT TO *CONSTRAINED LOT AREA*
TO APPLICATION NO. 511-2017
TODD RYAN
(BLOCK 1001, LOT 15.61 – 5 LARKSPUR LANE)**

WHEREAS, application having been made to the Fredon Township Land Use Board by Todd Ryan, who resides at 5 Larkspur Lane, Newton (Fredon Township), NJ 07860, to the Fredon Township Land Use Board, with respect to certain property owned by the applicant, said property known and designated as Block 1001, Lot 15.61, on the Fredon Township Tax Map, said property being commonly known as 5 Larkspur Lane, seeking the grant of a *bulk* variance pursuant to N.J.S.A. 40:55D-70(c.), (1) in order to enable construction of a detached residential garage on a lot and within a *constrained area* regulated by the Fredon Township Land Use Ordinances; and,

WHEREAS, in support of the application, the applicant having submitted, in addition to the completed application form, a copy of the form of notice provided to the property owners within 200 feet of the subject property, together with an affidavit of service; a permission letter enabling the Board to construct a site inspection of the subject property; a copy of a letter dated June 20, 2017 from Arlene Fisher, Zoning and Code Enforcement Official of the Township of Fredon; a photocopy of a survey plat entitled: *Survey of Property, Tax Lot 15.61, Block 1001, Fredon Township, Sussex County, N.J.*, said plats prepared by Douglas O. Dykstra, PLS, said plats being constituted of one (1) sheet being dated February 22, 1999 and bearing no revision dates thereon; a photocopy of three (3) photographs of the subject property showing the existing condition, proposed garage location and proposed garage location (different perspective); an enlarged portion of the survey of the subject property showing the dwelling house and having superimposed thereon (by the applicant) the configuration, location, dimensions and setbacks of the proposed garage; plans of the proposed garage prepared by PPB, Inc., - Pioneer Pole Buildings, Inc. of Schuylkill Haven, PA; and a photocopy of a construction permit for a retaining wall previously secured by the applicant and having been issued on April 20, 2017; and,

WHEREAS, Eileen Banyra, P.P., the Land Use Board planning consultant, having reviewed the application and rendered a report thereon dated August 20, 2017; and,

WHEREAS, David B. Simmons, Jr., P.E., the Land Use Board engineer, having reviewed the application and rendered a report thereon dated August 16, 2017; and,

WHEREAS, a hearing was held upon the application at the regular meeting of the Board convened on August 21, 2017, at which the applicant and his wife appeared, *pro se*, to present the application, plats and other submittals provided in support thereof and at which the Board, having granted various completeness waivers, determined the application to be *administratively*

complete and having taken Official Action thereon, as more specifically set forth hereinbelow; and,

WHEREAS, the Board having determined, based upon the proof of service and proof of publication provided by the applicant and reviewed by the Board secretary, that the applicant had provided proper, timely and adequate notice of the relief sought before the Board by having provided notice thereof, by certified mail, return receipt requested, too all property owners, etc. located within 200 feet thereof and by having published notice of said application in the official newspaper, all in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-12) and, accordingly, the Board determined that it was vested with jurisdiction to hear the application and take Official Action with respect thereto; and,

WHEREAS, no objectors or other parties interested in the application appeared before the Board at the hearing held thereon at the regular meeting convened on August 21, 2017, nor were any communications by or on behalf of any such objectors or interested parties received by the Board; and,

WHEREAS, as a result of the application made to it and the hearing held thereon, all as aforesaid, the Board does herewith describe the application particularly as follows and which it does herewith deem to be its basic **FINDINGS OF FACT**:

1. The applicant is Todd Ryan, who resides at 5 Larkspur Lane, Newton (Fredon Township), New Jersey 07860 and is the owner, together with his wife, of the subject property which is known and designated as Block 1001, Lot 15.61, on the Fredon Township Tax Map and is commonly known as 5 Larkspur Lane.
2. The property which is the subject of this application was created through a major subdivision application submitted by Phil and Mary Anne Deacon for the *Windy Brow Meadow Section III* several years ago.
3. When the subject property was created, the Deacons originally intended that the lot be smaller than presently configured but, on account of the *constrained area* requirements of the Fredon Township Land Use Ordinances, determined that, on account of the *constrained area* on this lot, in this case slopes in excess of 15%, to merge two (2) lots with each other thereby resulting in the subject property in its present size and configuration.
4. The subject property contains a total area of 2.89 acres and has frontage upon, existing driveway access to and is located on the northerly side of Larkspur Lane immediately across from its intersection with Hollyhock Way.

5. The subject property is located within the R-4 Residential Zone District and is presently improved by the single-family residence owned and occupied by the applicants which has an attached two car garage, an above-ground swimming pool and another detached accessory structure.
6. The applicant proposes to construct a 30' x 30' (900 s.f.) pole barn which the applicant indicates shall be used as a detached residential garage for residential accessory uses, exclusively.
7. The proposed residential garage will be located approximately 30' westerly from the easterly property sideline and will be accessed by means of a walkway to be established around the structure which improvements (the garage and walkway) are to be established within a "cut" into the bank which will be retained/stabilized by construction of a retaining wall, not exceeding the maximum height permitted by the Fredon Township Development Ordinances.
8. Section 550-28 of the Fredon Township Land Use Regulations allows a maximum wall height of 6 feet. Initially, the documents provided by the applicant showed an 8foot height retaining wall which were then superseded by a March 3, 2017 proposal from Ray Bears & Sons Landscaping, Inc., for a 4 foot high retaining wall.
9. The applicant confirmed that the retaining wall, based upon an engineering redesign of the slope and wall, will not exceed a height of 4 feet and is, therefore, a conforming height wall.

WHEREAS, as a result of the foregoing basic **FINDINGS OF FACT**, the Fredon Township Land Use Board does herewith make the ultimate **CONCLUSIONS BASED THEREON**:

- a. Variance relief is required from the provisions of Section 550-28 **Steep Slopes** of the Fredon Township Land Use Ordinance which defines a *constrained area/ steep slope* as one in excess of 20 percent.
- b. Accordingly, the applicant has sought and is required to be granted, prior to commencement of construction, variance relief pursuant to N.J.S.A. 40:55D-70(c.), (1) regulating *steep slopes* to enable construction within a "cut" portion of the lot of the proposed (30'x30' – 900 s.f.) detached residential accessory structure to be located in an area containing an average slope of 20 percent.
- c. The relief sought by the applicant can only be granted if the Board determines that there is *peculiar and exceptional practical difficulties to or exceptional undue hardship upon the applicant relating to a specific piece of property that is*

uniquely affected by (a) exceptional narrowness, shallowness or shape; (b) exceptional topographic conditions or physical features or (c) any other extraordinary and exceptional situation uniquely affecting the property or the structures lawfully existing thereon.

- d. Additionally, the Board must be satisfied that the relief sought to be granted can only be granted if it does not result in a substantial adverse impact to the public good or the Zone Plan or Zoning Ordinance of the Township of Fredon.
- e. The Board is satisfied that the applicant's development proposal and application are meritorious and meet both the *positive* and *negative* criteria of N.J.S.A. 40:55D-70(c.), (1) for the reasons summarized hereinabove and for the reasons found by the Board at the hearing held thereon on August 21, 2017.

NOW, THEREFORE, BE IT RESOLVED, by the Land Use Board of the Township of Fredon that, as a result of the application made to it, the Board's review of the application, plats and other submittals in support thereof and the testimony of the applicant made at the August 21, 2017, meeting, all as aforesaid, the **BULK VARIANCE**, enabling the construction of a 30' x 30' (900 s.f). detached residential garage on property known and designated as Block 1001, Lot 15.61, on the Fredon Township Tax Map, said property being commonly known as 5 Larkspur Lane, **BE** and same is herewith **GRANTED**.

BE IT FURTHER RESOLVED, that the foregoing Official Action is taken subject to full and continuing compliance by the applicant with the following terms and conditions:

- a. The applicant shall provide proof of the payment of all real estate taxes and assessments due on the subject property through the fourth quarter of 2017.
- b. The applicant shall undertake construction of the proposed residential garage in precise compliance with the plats submitted to, reviewed and approved by the Board, **any deviations therefrom** requiring resubmission to, re-review and reapproval by the Board.
- c. The applicant shall reimburse the Township of Fredon for the professional services (planning, legal and engineering) rendered in the administration of this application, including the cost of preparation of this memorializing Resolution.

- d. The applicant shall devote the proposed (30' x 30' – 900 s.f.) accessory building (pole barn) to residential uses permitted under the Fredon Township Land Use Regulations and no non-residential, such as commercial, use shall be made thereof, nor shall the structure be utilized for living quarters.

FREDON TOWNSHIP LAND USE BOARD

GUY MASI, CHAIRMAN

SUZANNE BOLAND, SECRETARY

I hereby certify the foregoing Resolution to be a true and complete memorialization of the Official Action taken by the Fredon Township Land Use Board at its regular meeting held on August 21, 2017, by a motion and vote as follows:

MOTION TO GRANT A *BULK* VARIANCE PURUSANT TO N.J.S.A 40:55D-70(C.), (1), TO APPLICATION NO. 511-2017, TODD RYAN WITH RESPECT TO BLOCK 1001, LOT 15.61 – 5 LARKSPUR LANE.

IN FAVOR: Chairman Masi, Mr. Boyle, Mrs. Prommel, Mr. Lazzaro,
Mr. Rome, Mrs. Holenstein, Mr. Richardson.

OPPOSED: None.

ABSTAIN: None.

ATTEST:

SUZANNE BOLAND, SECRETARY

Dated: October 17, 2017

FLUB: RyanGrantBulkVarianceReso