

UPPER TOWNSHIP PLANNING BOARD
MEETING MINUTES
MAY 17, 2007

The regular meeting of the Upper Township Planning Board was held at the Township Hall, 2100 Tuckahoe Road, Petersburg, New Jersey at 7:30 p.m.

CALL TO ORDER

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

SWEAR IN BOARD PROFESSIONALS

APPROVAL OF THE APRIL 19, 2007 MEETING MINUTES

A motion to approve the minutes was made by Mr. Schroder, seconded by Mr. Riordan, and approved.

1. **DETHOMASIS & LEVARI, INC. – BLOCK 599, LOT 45 – PB06-07**

Application is for preliminary and final site plan approval and variances for lot area and lot depth to construct an equipment storage facility with an office and a second floor apartment at 13 Roberts Avenue in Marmora.

Clement Lisitski, Esquire, represented the applicants.

Brian Murphy, Professional Engineer and Planner, was sworn in. He testified that the subject property is located at the end of Roberts Avenue. The lot is only 14,285.5 sq. ft. This is a dead end street. The applicant proposes to construct a 2,080 sq. ft. building to be used for storage of his equipment and an office. There will be an apartment on the second floor. He described the proposed drainage, location of trash enclosure and parking spaces.

Mr. Murphy further testified that a lot depth variance is needed to allow 142.86 ft. where 200 ft. is required. There is no additional land for the applicant to acquire. Buy /sell letters were sent to the owners of lot 37. The property will be landscaped. The fence located on the adjoining lot is partially on the applicant's property. This fence will remain. The proposed uses are permitted in the CM zone. A 10 ft. turnaround area will be provided. He believes this is a reasonable size building and use for the property. He believes that the benefits of granting the variances outweigh the detriments since the trash currently on the property will be cleaned up and the use of off road vehicles will stop.

UPPER TOWNSHIP PLANNING BOARD

MAY 17, 2007

PAGE 2 OF 10

Mr. Murphy testified that an additional variance is needed to allow the parking spaces to be 9' x 18' where 10' x 20' is required. They are not proposing a loading zone. There is sufficient space in front of the overhead doors for loading and unloading. Not adding a loading zone will also reduce the impervious surface. He believes that the variances can be granted without impairing the public good since they will be reducing the impervious surface and providing light, air and open space. He believes that granting the variances will not substantially impair the intent of the zoning ordinance since the use is permitted.

Mr. Dietrich stated that drainage calculations and an environmental report have been submitted. The report indicates there will be no impact to the environment since the area is already developed.

Mr. Lisitski stated that the applicants agree to meet the COAH obligation. The proposed office will be used for the applicants own business.

The meeting was open to the public. Hearing no response the public portion was closed and the meeting returned to the board for findings of fact.

MR. RIORDAN – DeThomasis and Levari, Inc. are requesting preliminary and final site plan approval and variances for lot area, lot depth, no loading zone and the size of the proposed parking spaces. Clement Lisitski, Esquire, is representing the applicants. There was testimony by Brian Murphy. The site plan is dated 2/12/07 and revised 5/3/07. Buy / Sell letters were sent to the owners of lot 37. He believes the proposal would be a benefit due to the aesthetics and the landscaping.

MR. CORSON – The applicant is proposing a 10 ft. wide road widening easement.

MR. SCHRODER – The project will not have a negative effect on the ordinance. The proposal will improve the aesthetics of the property. This is a minimal use.

MR. KISSLING – This is a small non-conforming lot. The proposal fits in with the town center core.

MRS. SCROCCA – The applicant will satisfy their COAH obligation.

A motion was made by Mr. Kissling and seconded by Mr. Schroder, to grant the application as proposed with the standard conditions. In favor: Bready, Corson, Riordan, Schroder, Kissling, Scrocca.

2. THOMAS TOWER / ACTION SUPPLY INC. – BLOCK 549, LOTS 110 & 132 THROUGH 136 AND BLOCK 565.03, LOT 54 – PB03-07

Application is for preliminary and final site plan approval for the purpose of soil mining relicensing and variances for pre-existing conditions at 1413 Stagecoach Road, Seaville.

Julius Konschak, Esquire, represented the applicant. The applicant was before the board on March 15, 2007 and has received an interpretation from the zoning board. He submitted a copy of the zoning board resolution previously identified as Exhibit A-9. He discussed the buffers. He referred to Exhibit A-8 correspondence from Cape Atlantic

UPPER TOWNSHIP PLANNING BOARD

MAY 17, 2007

PAGE 3 OF 10

Soil Conservation District that mentions lot 110. Previously submitted Exhibit A-11 and A-12 are licenses issued by the Township that include lot 110. Exhibit A-10 is a plan by William Swiderski from 1986. The licenses issued were based on the plan prepared by Mr. Swiderski that contains a 100 ft. buffer. He also referred to previously submitted Exhibits A-13 Contract For Sale of Lot 110 and A-14 the deed between Mr. & Mrs. Donzanti and the applicant.

Mr. Korschak stated that in April 2007 the application was tabled at the applicant's request to allow the applicant a chance to interact with the neighbors. The applicant proposes a 5 ft. earthen berm approximately 30 ft. wide along lot 110. They have agreed to install a 6 ft. stockade fence. A proposed buffer detail plan dated 3/29/07 was submitted to the board prior to the hearing.

Mr. Dietrich discussed the elevations of the proposed berm.

Joseph Maffei, Professional Engineer, was sworn in. He testified that the elevations at the berm location do fluctuate.

The meeting was open to the public.

Louis Angelino, 15 Cambridge Drive, was sworn in. He is opposed to the development.

Sandra Angelino, 15 Cambridge Drive, was sworn in. She is in favor of a berm. She doesn't believe the berm is high enough to block the noise and dust. She would like a larger berm about 25 ft. high.

David Ferrier, 13 Cambridge Drive, was sworn in. He wants the buffer to be 200 ft. He does not feel that a 100 ft. buffer is sufficient to reduce the noise from the soil operation.

Christine Ferrior, 13 Cambridge Drive, was sworn in. She feels the buffer should be at least 200 ft.

Claudia Schwab, 17 Cambridge Drive, was sworn in. She wants a 200 ft. buffer. She also would like to see a taller berm. Her property is most affected by the mining operation. She does not feel that it is fair that the applicant gets to mine in her back yard. She believes the mining operation begins too early and the hours of operation should be changed.

Michele Previti, 16 Canterbury Lane, was sworn in. She has toured the facility with Mr. Tower. She stated that Mr. Tower is accurate when he talks about a 30 ft. buffer on Evergreen Drive. She feels the expectations of the individuals on Evergreen Drive are different from her development since mining has been done there for many years. The laws have changed substantially since the time when 30 ft. buffers were allowed. The laws were changed since it was found that there was a problem with this type of operation in a residential area. The property owners near her were told that lot 110 would only be

UPPER TOWNSHIP PLANNING BOARD

MAY 17, 2007

PAGE 4 OF 10

open space. The application before the board includes 57 acres. A 200 ft. buffer would be less than 2 more acres. A compromise could be to remove the buffer that is along property owned by Mr. Tower. This would give Mr. Tower additional land to mine and the neighbors could have a 200 ft. buffer. She stated that the deed requires that 50 ft. from the fence onto lot 110 needs to be fully timbered at all time. The berm could not be in the 100 ft. wooded buffer.

Solicitor Marcolongo stated that the applicant could not build a berm in the buffer. In his opinion the applicant is required to maintain a 200 ft. to 500 ft. buffer. He believes the applicant requires a variance. The use is permitted but the board has the authority to impose conditions.

The applicant is in favor of keeping the 100 ft. buffer and building a 30 ft. berm.

Mrs. Previti stated that the law requires 200 ft. and 500 ft. buffers. She believes that a 15 ft. high berm with a 90 ft. base would be acceptable.

Leo Previti, 16 Canterbury Lane, was sworn in. He agrees that the deed requires that he cannot cut any trees for 100 ft. He doesn't believe that a 5 ft. tall berm would do any good. A 200 ft. buffer would leave the applicant with 14 acres out of 17 acres to mine. The applicant doesn't need a buffer next to his own property. The requested the township change the hours the applicant is allowed to operate.

Mr. Dietrich stated that the applicant has other commercial operations besides mining on these properties that are not regulated by the same hours of operation.

William Hallsworth, 10 Cambridge Drive, was sworn in. He agrees with Mr. & Mrs. Previti. He stated that the noise from the pit is a way of life for them. He feels the board needs to protect the residents from the noise.

Geraldine Dull, 11 Cambridge Drive, was sworn in. She would like to see a bigger buffer and wider berm.

Mr. Korschak commented that the 100 ft. buffer and 30 ft. wide berm is above and beyond what is contained in the deed restriction. Given that the rest of the property has a 30 ft. buffer they feel this would be sufficient.

Solicitor Marcolongo stated that his opinion is that the applicant is required to install a 200 ft. to 500 ft. buffer and that a variance is required to permit less. There has been no testimony as to hardship or negative criteria. When Mr. Tower first purchased the property in 1986 site plan approval was not required, however a month and a half after the applicant purchased the property the zoning ordinance changed and site plan approval was required as a condition of licensing and the 200 ft. and 500 ft. buffers went into affect. In the summer of 1987 the applicant applied for site plan approval. The board recommended that site plan approval be granted but only if the 200 ft. and 500 ft. buffers

UPPER TOWNSHIP PLANNING BOARD

MAY 17, 2007

PAGE 5 OF 10

were maintained. In 1989 Mr. Tower again applied for site plan approval, BA20-89 requires the 200 ft. and 500 ft. buffers. He believes the language in the deed is not binding upon this board. The decision made by the zoning board on the interpretation only states that they were a pre-existing non-conforming use and they are protected as to that use. That interpretation does not protect against subsequent regulations. He discussed similar case law. He believes it is clear that towns have the ability to regulate existing non-conformities so long as the regulations are reasonable and do not rise to a level of a taking. He believes that the applicant is required to have 200 ft. and 500 ft. buffers but that the board has the ability by way of variance to reduce the buffers.

Mr. Korschak referred to sheet 5 of 8 on the submitted site plan. A note is included that traces the history of the EDA plan from its original date of 10/11/89. The revision date is 11/28/89. There is no other plan in respect to lot 110 other than the plan prepared by Mr. Swiderski.

The board was asked for their findings in regards to the buffer.

MR. BREADY – He is in favor the 100 ft buffer and 30 ft. berm.

MR. CORSON – He agrees that a variance is needed for the buffer and that 200 ft. and 500 ft. buffer is needed.

MR. RIORDAN – He agrees that the buffers should conform to the current township standards.

MR. SCHRODER – He agrees with Mr. Bready that the 100 ft. buffer is appropriate. He believes that Mr. Tower has gone above and beyond to create a 5 ft. berm, vegetation and a 6 ft. tall stockade fence. He believes that he has compromised with the neighbors by adding an additional 30 ft. to the buffer. From what he is seeing the neighbors are not compromising. The 100 ft. buffer and the 30 ft. berm are acceptable to him.

MR. KISSLING – The deed requires that the applicant maintain a 100 ft. buffer. He believes the 100 ft. buffer is all that is required.

MRS. SCROCCA – She does not agree with most of the board members that Mr. Tower's position is correct but they do not give any factual basis as to why. There is no question that the rest of the application is essentially the same as submitted in prior years and has been approved. The only thing different is the addition of lot 110. He appreciates that Mr. Tower has reached out to the neighbors. The board has police power to protect the neighborhood. She believes that Mr. Tower may have been grandfathered in initially, however he has not had a license since 1991. He has not legally operated since 1991. The board has been consistent that any plans have to be issued consistent with the zoning ordinance. Mrs. Previti pointed out that the other side of the mine had a lot of issues and for that reason township committee obviously changed the zoning and made the requirements more strenuous. The board has been consistent that the applicant meets the current buffering standards. She believes that the 1987 ordinance requiring 200 ft. and 500 ft. buffers applies.

UPPER TOWNSHIP PLANNING BOARD

MAY 17, 2007

PAGE 6 OF 10

A motion was made by Mr. Kissling and seconded by Mr. Schroder, that the 100 ft. buffer and 30 ft. berm is the appropriate buffer under the law. In favor: Bready, Schroder, Kissling. Opposed: Corson, Riordan, Scrocca.

Thomas Tower, 1413 Stagecoach Road, Seaville, was sworn in.

Joseph Maffei testified that the lot is irregular shaped. A 500 ft. buffer would eliminate the entire mining operation on lot 110. Complying with the 500 ft. buffer would be a hardship and deem the property unusable. He described the proposed 30 ft. wide berm as being 5 ft. on the residential side and higher on the excavation side. A 200 ft. buffer would contain approximately 110 ft. of vegetation since the property is already cleared. He believes that providing the 30 ft. wide berm, 5 ft. high, 5 to 6 ft. trees and 6 ft. fence on top provides better protection. He believes that the benefits of providing the berm outweigh any detriments. Incorporating the berm and fence can be done without detriment to the zone plan and zoning ordinance since the berm will create a better situation. He believes that waiving the buffer requirement in the westerly corner where it adjoins Mr. Towers own property is appropriate.

The meeting was open to the public.

Mrs. Previti asked how tall an earthen berm could be constructed within the. Mr. Maffei stated that it could be approximately 8 ft.

Mr. Previti asked if lot 110 were large enough to mine. Mr. Maffei answered that the lot could not qualify on its own to be mined since it is only 17+ acres. Mr. Previti believes that even with a 200 ft. buffer the applicant is gaining additional acreage to mine. He believes the applicant is not giving up much at all.

Claudia Schwab, 17 Cambridge Drive, asked where her property was on the map.

William Hallsworth stated that the neighbors are negotiating in good faith. They always knew that 200 and 500 ft. buffers were required. They don't feel the applicant's proposal of 130 ft. is acting in good faith. They have spent a lot of time and effort on this.

The public portion of the meeting was closed.

Mr. Dietrich believes that a 12 ft. berm is appropriate with a flat top for planting and a fence.

The board gave their findings of fact.

MR. RIORDAN – Thomas Tower is the owner of Block 549, lot 110, 132 through 136 and Block 565.03, lot 54. The applicant is seeking site plan approval and a variance for the buffer. Jules Konschak, Esquire, represented the applicant. Joseph Maffei, PE, has

provided testimony. There were numerous comments by residents. The most popular requests are a higher berm, larger buffer and concerns about dust and noise.

MR. CORSON – The applicant has requested relief from a 200 to 500 ft. buffer. The board engineer has testified that a 12 ft. high berm could grow vegetation and be stable.

MR. BREADY – He feels the 130 ft. as discussed should qualify.

MR. SCHRODER – He agrees with Mr. Bready.

MR. KISSLING – He has lived here since 1971. This has always been a sand plant. This is a pre-existing condition. He believes that everyone has been trying to compromise more so than is legally required. The deed indicates that the applicant could not mine for a year after purchase. This says to him that Mr. Donzanti wanted to sell the subdivision before anyone knew a mine existed.

MRS. SCROCCA – The plan with the exception of lot 110 has come before the board many times and there was never a problem. She believes that Mr. Tower has a hardship since the buffer takes away a piece of the property but she does not believe the benefits of granting the variance would outweigh the detriment. She agrees with the audience that a 5 ft. berm may not block the noise. The detriments are greater. The noise and dust created by the mine is the reason township committee enhanced the buffers. She doesn't believe it would benefit the public good to grant the variance.

Mr. Korschak requested to table the application until next month to give Mr. Kelly a chance to listen to the tape and have seven board members vote on the motion.

A motion was made by Mr. Bready and seconded by Mr. Schroder to grant a 100 ft. buffer with a 30 ft. wide berm. In favor: Bready, Schroder, Kissling, Opposed: Corson, Riordan, Scrocca.

A motion was made by Mr. Corson and seconded by Mr. Riordan, to amend the application to a 200 ft. buffer with a 12 ft. high berm with a 6 ft. high stockade fence and a double row of trees as suggested on the buffer plan, and reduce the buffer in the rear of lot 110 where it abuts the applicants property and preliminary and final site plan approval with the condition that there will be no equipment storage on lot 110 this is only as to the portion that was previously in the mining district. In favor: Bready, Corson, Riordan, Kissling. Opposed: Scrocca, Schroder.

3. ORDINANCE REVISIONS TO CHAPTER 19 LAND SUBDIVISION AND SITE PLAN AND CHAPTER 20 ZONING AND ZONING DISTRICT CHANGES PURSUANT TO THE NOVEMBER 2006 MASTER PLAN REEXAMINATOIN AND UPDATE TO THE MASTER PLAN AND LAND USE PLAN ELEMENT

Mrs. Scrocca stated that at last meeting the board went through the land use revisions in detail. Mr. Dietrich has made revisions to the draft based on public comment and board input. Retail garden centers have been added as permitted uses in the TC and TCC zones. Auto sales have been added as permitted uses in the CM2, CM4 and CMP zones. Added notes in regards to shopping centers, removed the note prohibiting drive thru's in

UPPER TOWNSHIP PLANNING BOARD

MAY 17, 2007

PAGE 8 OF 10

restaurants, revised building coverage and impervious coverage in the TC, TCC, CM2 zones and removed the section limiting the size of retail stores, changes to the yard and area requirements and added section affordable housing group homes and associated definitions. There will be a separate meeting to address affordable housing.

Mr. Dietrich stated there are two items regarding affordable house at the two sites, the mobile home park on Tuckahoe Road and a group home on Dennisville-Petersburg Road. The rest of the housing plan has not been prepared in a draft form. He has photos of an existing mobile home park owned by Ralph Clayton.

There was discussion concerning large box stores, infrastructure that exists in the township and ratables.

The meeting was open to the public.

Jules Konschak, previously sworn, has lived in the township for 35 years. He believes the ordinance is taking a dangerous risk with development in Upper Township. He believes that it is inappropriate to limit the size of stores. He stated that the planner that has been hired is from out of town and does not know the area. The whole ordinance is designed to simply limit commercial development. He doesn't think this is a good idea. He believes the limitation on the store size should be struck from the ordinance. He feels that approved uses have been included where they will not be built. He suggests that warehouse and auto dealerships be allowed in TC and TCC districts.

Charles Kona, previously sworn, stated that everyone in the township is burden with taxes. He is not in favor of big box stores however he does believe something is needed to stabilize taxes and drawl other businesses. The roads are already used by residents in the township commute to different towns everyday to go to work and for residents to get to stores in other towns. Commercial uses would keep residents local and help to flourish local businesses. He doesn't believe box stores should be limited. He believes that lot coverage and impervious coverage should control the size of what is built on a site. He doesn't understand why the board is eliminating drive thru facilities.

James Beacotte, 730 Stagecoach Road, Marmora, was sworn in. He believes that commercial uses are needed to increase our tax revenues. Traffic will be a major problem if box stores come to the township. His opinion is to expand the commercial zones as much as possible. He believes there is no reason to have four trailer parks in the township. He doesn't feel the township has to trash their own community to meet the COAH obligations when they can send money to another community.

Ian McCarthy, of Middlesex, NJ, represents the developers that are actively looking at property along Route 9 and have been following the specifics of the CAFRA endorsement plan specifically the TC and TCC districts. He believes that Chapter 19 of the zoning amendments the language regarding the design of the bulk regulations is excellent and consistent with the MLUL and the intent of good design. The specific

restriction on the retail component in of itself does not address the types and uses that ultimately could be developed. There has not been any traffic analysis to determine any impact on the infrastructure. He will be looking to create a development. A big box store is an anchor for to the smaller uses. As he further evaluates the options to consider Upper Township the 75 sq. ft. restriction would be a non-starter because any of the larger corporate national operators would not seek a use variance on that scale. The idea of a pedestrian friendly component makes sense however for what will ultimately get developed on the Route 9 corridor would not be someplace a large amount of pedestrians would be walking too.

Joseph Maffei, 231 Woodbine Road, Steelmantown, was sworn in. He agrees with Mr. Kona in regards to the big box stores. The stores would provide jobs. The residents of the township have to travel to get to stores. If the stores were local he would stay local. Bringing individuals from other places would be a benefit since they would use the local gas stations, restaurants and other stores in the area. The township needs the ratables. He stated that road improvements come with larger development.

Fred Banner, Oak Street, Marmora, was sworn in. He is concerned about the financial impacts to the community. He stated that a financial impact assessment has not been provided. He further stated that 20% of the mobile homes that are proposed to be in the township are for affordable housing who will use the public schools. He discussed a document sent to the board 2/16/07 in regards to a wetland delineation to be done at Block 639, lots 14, 15.01 and 15.02. He referred to a conceptual plan that he was given by Mr. Dietrich. He suggested that the board was unethical and misleading.

Mrs. Scrocca responded that if anyone believes there is an ethical problem to report it to the state. There is not a conflict of interest on the board and there has been nothing but an open process since this began over 2 years ago.

The board members indicated that they have not seen the letter about the wetlands. This type of correspondence is copied to the township on a regular basis and filed until a formal application is filed with the board.

John James Germanio, P.O. Box 545, Belleplain, was sworn in. He referred to the grandfather lot in the Pinelands. He asked about the zone line on his property on Route 50 in Tuckahoe.

Donald Wimberg, Winthorp Evergreen Drive, was sworn in. He likes the taxes here compared to his home in Florida. He discussed the benefits of senior housing.

A special meeting will be held on May 31, 2007 at 7:30 p.m. to continue the ordinance revisions.

RESOLUTIONS

1. WILLIAM McDANIELS – BLOCK 348, LOT 83.01 – SD08-07

A motion to adopt the resolution was made by Mr. Corson, seconded by Mr. Bready, and approved.

2. STODDARD & MARJORIE BIXBY – BLOCK 348, LOTS 88, 88.01, 92 – SD10-07

A motion to adopt the resolution was made by Mr. Corson, seconded by Mr. Riordan, and approved.

3. DEAN R. MARCOLONGO – RESOLUTION FOR PROFESSIONAL SERVICES FOR 2007

A motion to adopt the resolution was made by Mr. Corson, seconded by Mr. Bready, and approved.

BILLS

A motion to approve the bills for payment was made by Mr. Schroder, seconded by Mr. Corson, and approved.

ADJOURNMENT

The meeting was adjourned at 11:10 p.m.

Submitted by,

Shelley Lea