

UPPER TOWNSHIP PLANNING BOARD
MEETING MINUTES
JULY 17, 2008

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

CALL TO ORDER

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Present: Daniel Bready, James Kelly, Gary Riordan, James Schroder, Donald Kissling, Duane Terwilliger, Susan Ragan and Chair Renee Scrocca.

Absent: William Brown, Curtis Corson and Mayor Richard Palombo.

Also in attendance were Dean Marcolongo, Board Solicitor, Paul Dietrich, Board Engineer; Shelley Lea, Board Secretary.

PAUL DIETRICH WAS SWORN

APPROVAL OF THE JUNE 19, 2008 MEETING MINUTES

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

**APPROVAL OF THE MEETING MINUTES FROM FEBRUARY 26, 2008 –
STRATHMERE DEANNEXATION**

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

**APPROVAL OF THE MEETING MINUTES FROM APRIL 30, 2008 –
STRATHMERE DEANNEXATION**

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

**APPROVAL OF THE MEETING MINUTES FROM MAY 21, 2008 –
STRATHMERE DEANNEXATION**

A motion to approve the minutes was made by Mrs. Ragan, seconded by Mr. Kelly, and approved. Abstain: Schroder.

TABLED APPLICATIONS

The following application has been tabled until August 21, 2008. The applicant has agreed to waive the tolling of time. There will be no further notice required.

RC CAPE MAY HOLDINGS LLC – BLOCK 479, LOTS 74, 76 & 76.01 – PB12-08

APPLICATIONS

1. JOSEPH PATTERSON – BLOCK 453, LOT 176 – PB10-08

Applicant is requesting to change the zoning of his property located at 140 Route 50 in Greenfield from Conservation to a Commercial Zoning District.

Solicitor Marcolongo informed the Board that Mr. Patterson has made a request to Township Committee to rezone his property. Pursuant to Municipal Land Use Law before any zone change can take effect it must come to the Planning Board for their review. The Planning Board must make a recommendation to Township Committee.

Marsha R. Shiffman, PP, AICP, CLA, of Maser Consulting, P.A., was sworn. She testified that her firm was authorized to prepare a zoning study. She listed the materials that were used to prepare the Zoning Study dated May 7, 2008. The property is located on Route 50 at the edge of the Seaville Town Center. She has reviewed Mr. Patterson's property along with an expanded study area.

Ms. Shiffman testified the subject lot is almost 13 acres. The entire study area is in the Conservation zone and includes 52 acres. She felt it was important to look at a broader area to evaluate the property and determine if any other properties should be considered. Approximately 7 acres of Mr. Patterson's property is uplands and contains a house, a seasonal bakery and fishponds.

Ms. Shiffman indicated that she has spoken to Mr. Patterson and his son and they have informed her that they are going through the process of farmland assessment. In the future they plan to apply for farmland preservation. The tax records show the property is classified as Class 2, which is residential. Only 24 acres of the entire study area is uplands. A majority of the study area is wetlands and the Fish and Wildlife Service owns a substantial portion of the lands. Of the remaining unconstrained lands Mr. Patterson owns most.

Ms. Shiffman stated there are other types of commercial uses in the area. This area has no public water or public sewer. The 1994 and 2004 Master Plans show the property being zoned Commercial. The property was rezoned Conservation during the 2006

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Master Plan Reexamination. When the center boundaries were defined it was not a property the Board felt should be included within the town center. To change the boundaries of the town center would be very difficult and would require going back to the Planning Commission and NJDEP to revise the CAFRA boundaries adopted in April 2008. She reviewed the map titled "Recommended Zoning" that was included in her report. She believes the Patterson property is unique due to the amount of uplands and the development potential on that property.

Ms. Shiffman listed the permitted uses in the Conservation Zone. The properties across Route 50 are zoned CM2 and allows commercial uses. This would be consistent with the bakery use on the Patterson property. She recommends rezoning the Patterson property and leaving the rest of the study area in the Conservation Zone. She recommends the CM2 Zoning District, which is a less intense commercial area and is consistent with the commercial zoning across the street and would be consistent with the town center. She suggests ending the zoning at the power line easement similar to the rest of the commercial properties.

Mr. Dietrich testified that he concurs with Ms. Shiffman's analysis. The reason it was changed to Conservation was that its predominantly an existing farm even though it contains a historic commercial use in the front.

Joseph Patterson R. Patterson, 144 Tyler Road, and Joseph M. Patterson, 140 Route 50, were sworn.

Mr. Patterson (son) testified that his father has owned the property for 38 years. They were surprised and annoyed at the recent zoning change.

Mr. Patterson (owner of the property) testified that he purchased the property in 1971 and opened a bakery. He is upset that he was not notified about the change in zoning.

Barbara Allen Woolley Dillon, Professional Planner, was sworn. She testified that she has reviewed Ms. Shiffman's report and concurs with her opinions for the exact same reasons.

The meeting was open to the public.

Charles Kona, 3 Mosquito Landing Road, Tuckahoe, was sworn. He testified that he supports the zoning change. He believes there is an error in the map "Existing Land Use" that Ms. Shiffman will look into. In his review of the land in this area, specifically lots 177.01, 177.02 & 177.03, some of the best ground is west of the power line. He feels this should also be rezoned commercial. This includes property owned by Craig Schultheis. He referred to the "Current Zoning" map. He believes the Conservation zoning has a certain stigma attached to it. He noted that he did not observe any wetlands on lot 177.03.

Hearing no further comment the meeting returned to the Board.

MR. KELLY – Joseph Patterson is the owner of Block 453, Lot 176 located at 140 Route 50, Greenfield. The applicant has made a request to Township Committee to change the zoning of his property. Marcia Shiffman has made a presentation and Barbara Allen Woolley Dillon, the planner for the applicant, did a follow up report. Both plans were informative about the property and surrounding area. Mr. Kona commented about the stigma associated with the conservation zone. He suggested that the property west of the power lines should be rezoned and that there are no wetlands on lot 177.03 as shown on the existing land use map in the report.

MR. KISSLING – He believes the property to the west of the power line should be part of the rezoning.

MR. BREADY – He is familiar with the property and the area. He believes the property should be rezoned.

MR. RIORDAN – He read a portion of the report by Ms. Dillon that lists the reasons why she agrees with Ms. Shiffman's report.

MRS. SCROCCA – She agrees with both of the reports that have been filed. She does not believe the Board has enough information to determine if the land beyond the power line should be rezoned.

A motion was made by Mr. Bready and seconded by Mr. Riordan, to approve the request for rezoning in the form proposed in Ms. Shiffman's report and that the zoning change be limited to the area east of the power line. In favor: Bready, Kelly, Riordan, Schroder, Terwilliger, Kissling, Ragan, Scrocca.

2. McPRIMUS, LLC – BLOCK 600, LOT 35 – PB11-08

Application is for site plan approval for an addition to an existing commercial building and variances for lot area, front yard setback, lot depth and buffer for an office building at 222 Route US 9 South, Marmora.

Julius Korschak, Esquire, represented the applicant. He stated that the applicant is requesting preliminary and final site plan approval for an addition and site improvements to an existing structure. The property was used as Dr. Rubin's Veterinary Office for many years. The Victorian style building is structurally sound and can be preserved. The property is located in the Town Center Zone (TC).

Mr. Korschak submitted a copy of the Zoning Permit signed on 5/27/08 that was marked as Exhibit A-1. A copy of correspondence from the Cape May County Planning Board, dated June 12, 2008 was marked as Exhibit A-2. A copy of correspondence from the Cape Atlantic Conservation District, dated July 2, 2008 was marked as Exhibit A-3.

Mr. Korschak further explained that the proposed signage would meet the ordinance requirements. The addition will be in the back of the structure. The parking lot will be reconfigured and some limited clearing. A new well and septic will be installed.

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Mr. Korschak stated that the new zoning ordinance requires 40,000 sq. ft. lot area. A variance is needed since there is only 30,238 sq. ft. of lot area. There is no land to purchase to correct this situation. A variance is needed for lot depth to allow 192.23 ft. where 200 ft. is required. They do not meet the 10 ft. wide buffer requirement.

Dave W. Shorten, Professional Engineer and Terry Thomas, Professional Engineer and Registered Architect, were sworn in along with William McMann, 3 Staples Court, Beesleys Point and Marla McMann Primus, 14 Braden Drive, Palermo, contract purchasers.

Mr. Thomas testified the Cheesecake World is located to the south and there is a medical complex in the rear. The building has been there for many years. It will be necessary to strip the inside of the building since it is not configured for a modern office space. They propose to add 700 sq. ft. to the building. They plan to respect the Queen Anne architecture. They will change the shingles on the roof but not the geometry of the building. A clock tower will be added to highlight the entrance and enhance their presence on Route 9. The handicap ramp will be compliant with the code. They propose 15 – 10' x 20' parking spaces where only 14 are required. They are proposing to install 4 ft. wide sidewalks along Route 9 and there are interior sidewalks to aid circulation on site. After discussing the driveway with the NJDOT they no longer propose to reconfigure the driveway. He will revise the plan to show the driveway in the original location.

Mr. Thomas testified that they are unable to increase the size of the lot since the area is developed and there is no property to purchase. They do exceed the width requirement. A waiver is needed for the buffer since there is no room on the property to install a 10 ft. wide buffer. They have installed additional landscaping. He feels the variances can be granted without detriment to the public good and without impairing the zone plan and zoning ordinance. Since they have added additional landscaping on the site he feels they have met the intent of the ordinance. The existing front yard setback on the zoning schedule is not correct. Mr. Dietrich stated that any portion of the handicap ramp that is higher than 18" is required to meet the setback. Mr. Korschak requested the Board consider granting the variance to allow the handicap ramp to encroach further into the front yard setback. A revision will be made on the plan to show the exact dimension.

Mr. Dietrich agreed that the plantings meet the intent of the ordinance as suggested by Mr. Thomas.

Mr. Thomas testified that they propose to preserve the cedar trees between the site and facility to the north. The existing sign is ideally located on the site. They propose to increase the sign area but stay within the requirements. The sign can be easily identified for safety reasons.

The meeting was open to the public.

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The owner of Cheesecake World, was sworn. He is in favor of granting the application since the property has been abandoned for the last 6 months and is becoming an eyesore. He feels this is a positive proposal. He also requested that the tree in the front yard be removed.

Mr. Thomas indicated that the tree would be removed.

Mr. Dietrich reminded the Board there would be the standard condition in regards to Growth Share or the Development Fee.

The Board gave their findings of fact.

MR. BREADY – He is in favor of the proposal given by the applicant's professionals. He believes the proposal conforms to the area.

MR. KELLY – McPrimus LLC is the contract purchaser of the property located at 222 Route US 9 South in Marmora. The plans are dated 5/14/08 and last revised 6/20/08. Jules Kenschak represented the applicants. Variances are needed for lot area, front yard setback and lot depth. A waiver is needed for the required 10 ft. buffer. The owner of the Cheesecake World is in favor of the application and welcomes a new neighbor. A copy of an approved zoning permit was marked A-1; Correspondence from the Cape May County Planning Board was marked, as A-2 and correspondence from Cape Atlantic Conservation District was A-3.

MR. RIORDAN – The applicant justified the requests for the variances. The adjoining land is developed and not available. He believes the building is aesthetically attractive and will compliment the development of the Marmora Town Center. He commends the applicants for preserving an old building.

MR. SCHRODER – Believes this will be a wonderful addition to the area.

MR. KISSLING – The variances are all minor in relation to preserving a historical building.

MR. TERWILLIGER – He agrees the application should be granted for their willingness to improve the existing structure.

MRS. SCROCCA – She agrees the variances can be granted without impairing the intent of the zoning ordinance since all the conditions are pre-existing and cannot be improved. She believes the landscaping is an improvement and that the benefits outweigh the detriments.

A motion was made by Mr. Kelly and seconded by Mr. Kissling, to grant the application with the standard conditions and that the plans are revised to evidence that the driveway will remain as it currently exists and also evidence the correct front yard setback particularly the portion of the handicap ramp that is above 18 inches. In favor: Bready, Kelly, Riordan, Schroder, Kissling, Terwilliger, Ragan, Scrocca.

DISCUSSION

Chair Scrocca proposed having Solicitor Marcolongo frame the motions to be sure there is a completely accurate motion with all the conditions. She suggests framing the motion in the positive rather than the negative.

The Board agreed that Solicitor Marcolongo will frame the motion and the Board members will make the motion and second it.

SMALL WIND ENERGY ORDINANCE

Mr. Dietrich stated that a letter from Solicitor Marcolongo, dated June 24, 2008, was sent to the Board members. He thought the major issue was regarding lot size. He believes that a windmill on a lot less than 20,000 sq. ft. would be too much. Windmills are setup as conditional uses permitted in all zones. The standards could be so that a use variance would not be required if the bulk variances were not met. He believes that multiple windmills should not be permitted on lots less than 3 or 5 acres.

Mr. Dietrich will look into this matter further and advise the Board at the next meeting.

RESOLUTIONS

1. HANSON AGGREGATES BMC, LLC – JULIES PIT – BLOCK 414, LOT 44 – PB03-08

A motion to adopt the resolution was made by Mr. Schroder, seconded by Mr. Kelly, and approved. Abstain: Schroder.

BILLS

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

F.Y.I.

Solicitor Marcolongo announced that Thomas Tower / Action Supply Inc. has appealed Judge Armstrong's decision. Mr. Konschak and Mr. Light are trying to resolve the issue. If not, Mr. Light will appeal Judge Armstrong's decision as to the zoning board's decision.

ADJOURNMENT

A motion to adjourn the meeting was made by Mr. Kelly, seconded by Mr. Kissling, and approved. The meeting was adjourned at 8:55 p.m.

Submitted by,