

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
MAY 10, 2007**

The regular meeting of the Upper Township Zoning Board of Adjustment 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

ROLL CALL

Present: Elizabeth Bergus, Mary Jean Burgin, Ted Klepac, Andrew Shawl, Christopher Phifer, Lynn Petrozza, Jeffrey Pierson.
Absent: Matthew Unsworth, Paul Casaccio.

Also present were Dean Marcolongo, Board Solicitor; Paul Dietrich, Board Engineer; Shelley Lea, Zoning Officer and Board Secretary.

Jeffrey Pierson acted as Chairman.

SWEAR IN BOARD PROFESSIONALS

APPROVAL OF THE MARCH 28, 2007 AND APRIL 2, 2007 MEETING MINUTES

A motion to approve the minutes was made by Mrs. Bergus, seconded by Ms. Petrozza, and approved. Abstain: Burgin.

TABLED APPLICATIONS

The following application has been tabled until June 14, 2007. The applicant has agreed to waive the tolling of time. There will be no further notice given.

1. RALPH HOLT – BLOCK 652.01, LOT 19 – BA01-07

APPLICATIONS

1. JAMES MONTELEONE – BLOCK 639, LOT 22 – BA07-07

Application is for a rear yard setback variance to construct an addition to an existing single-family dwelling at 234 Church Road, Marmora.

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James Monteleone, 234 Church Road, Marmora, was sworn in. He testified that he obtained permits to construct an addition to the rear of his house. The as built survey showed that the rear yard setback is 45.8 ft. where 50 ft. is required. This was merely a miscalculation probably due to the irregular shape of the lot. Only one corner of the structure encroaches into the setback. He submitted photos of the property that were marked as Exhibits A-1, A-2 and A-3. The addition was complete in August.

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

MR. PHIFER – He has seen the property and has no problem. This is a nice property and there is plenty of room.

MR. SHAWL – James Monteleone is the owner of 234 Church Road in Marmora. He submitted an as built survey dated 10/30/06 that shows the addition is only 45.8 ft. from the rear property line where 50 ft. is required. There appears to be an error in the design. One corner of the house encroaches into the rear yard setback. This is a flag lot. The house is not situated parallel with the rear lot line. There was no public comment.

MRS. BURGIN – The other setbacks conform to the standards in the Residential District.

MR. KLEPAC – The applicant represented himself and acted in good faith.

A motion was made by Mrs. Bergus and seconded by Ms. Petrozza, to grant the rear yard setback with the standard conditions. In favor: Bergus, Burgin, Klepac, Shawl, Phifer, Petrozza, Pierson.

2. GAETANO & MARIA GIORDANO – BLOCK 668, LOTS 21, 22 & 23.01 – BA40-06

This is a continuation of an application for an interpretation as to whether these lots have merged to determine if lots 21 & 22 are a separate building lot at 411 Route US 9 North, Beesleys Point.

Clement Lisitski, Esquire, represented the applicants.

Mary Jean Burgin confirmed that she listened to the tape of the first hearing in April.

Mr. Lisitski stated that they are prepared to provide evidence that the lots have not merged and that a single-family dwelling can be constructed on lots 21 & 22. If the board interprets that the lots have merged the applicant will have to file an application with the planning board for a minor subdivision with variances. He stated that there are no permanent structures on the vacant lots.

Maria Giordano, 14 Hollyberry Lane, Marmora, was sworn in. She testified that she would like to construct a house on lots 21 and 22. A copy of a 2006/2007 tax bill was submitted as Exhibit A-15. The tax bill shows all three lots. She testified that they

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purchased the property in 1988 just before they were married. Part of the reason for choosing this property was that the former owner and the realtor had indicated that the lots were separate and an additional house could be constructed. They planned to build a house on the vacant lots ever since they purchased the property. There are no permanent structures on either the vacant lots.

Mrs. Giordano further testified that they moved from this property in 1997 since they needed a larger home. They never required that the tenants mow the grass. There is a wood fence behind the house on lot 23.01 and a picket fence along the side. A chain link fence runs along the rear of the vacant lot and down the side to Route 9. She has no idea where the well is located. The house was later converted to public water and the well was capped.

Mr. Lisitski stated the fact that the well was previously located on the vacant does not constitutes a merger. The well was capped when the applicants converted to city water. The lots are shown separately on the tax map. He submitted copies of documents from the Myrtle Young application that were marked as Exhibit A-16. The documents included the zoning board application, deeds, (Exhibits A-2, A-11 & A-12) resolution and correspondence from Mr. Korschak to the board of adjustment dated July 31, 2006. Exhibit A-17 is a copy of a portion of the tax map showing Ms. Young's lots in Petersburg. Exhibits A-18 and A-19 are photos of Ms. Young's property that were marked as Exhibits A-6 and A-8 during her application.

Gaetano Giordano, previously sworn, testified that he purchased the property with the intent to build a house on the vacant lot. The renters may have used the vacant lot to park and turn around their vehicles. He has parked his boat on the vacant lot. He always felt that the lots were appropriate for a separate home.

Mr. Giordano further testified that a new well was installed on the vacant lot. The well was capped when they hooked up to city water. The septic is located between the house and the garage. He does not know what the concrete lids are on the vacant lots.

Joseph Maffei, Professional Engineer, was sworn in. A plan by EDA, dated 2/20/06 and revised 4/3/06 was marked as Exhibit A-20. He testified that the lids are part of a gray water system. The Cape May County Dept. of Health has required they be backfilled with sand and pumped out. The abandoned well will be used for irrigation. They have obtained septic approval for the vacant lots.

Barbara Allen Woolley-Dillon, Professional Planner, was sworn in. She prepared a chart showing the sizes of other lots in the area. The chart was marked as Exhibit A-21. Exhibit A-22 is a map showing conforming lots in surrounding neighborhoods. There are only 3 lots that conform to the 40,000 sq. ft. requirement. Exhibit A-23 is a list of parcels by size in the immediate neighborhood around Block 668, Lots 21, 22, 23.01. Exhibit A-24 is a group of photos showing the neighboring properties and also two photos of Myrtle

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Young's property. The photos show that there is no visual impact on the property owned by the Young's or Schoyer's. Exhibit A-25 is a map showing houses in surrounding neighborhood on lots that do not conform to minimum required lot size. Exhibit A-26 is a map showing ages of housing in surrounding neighborhood.

Mr. Lisitski's opinion of the case law is that if a lot is created by inheritance there is an exception from the subdivision ordinance and that exception says that you do not need to apply for a subdivision. He believes the board was correct in the Myrtle Young decision.

Christopher Facenda, Esquire, was present to represent Harry Young and Robin Schoyer. He stated that Mr. Giordano testified that he purchased lots 21, 22 & 23.01 in 1988. He bought the property from the Estate of Camp not multiple sellers. He received one deed. He has received one tax bill since 1988 for all three lots. All three lots are individual. All three lots are undersized. Even if the three lots were put together the lot would still be undersized. All three lots are contiguous. All three lots front on Route 9. The fence that was discussed does not run between the lots but along the rear of the property.

Mr. Giordano testified that he has used the vacant lot to store his boats. He also testified that to his knowledge no one in his family has ever had a garden on the vacant lots. He has never authorized anyone to sell boats from the vacant lots. His kids played on the lots. He has traveled across the lots moving his vehicles and has parked on the lots. He has had parties on the lots and a yard sale. The tenants made the tire tracks in the yard. The second well is located on lot 22. He did not have legal representation when purchasing the house.

Mr. Facenda went on to question Mr. Maffei. Mr. Maffei testified that the gray water system could have been at one time connected to the main house since it is the only septic system back there.

Ms. Dillon testified that she guessed that lot 23.01 was approximately 5,600 sq. ft. Based on a current survey lot 23.01 is actually just over 6,600 sq. ft. She confirmed that Exhibit A-21 contains incorrect information in terms of actual sizes.

Robert Schoyer, 412 Euclid Avenue, Beesleys Point, was sworn in. He testified that he lives in the property directly behind the applicant's property. He purchased the property from his in-laws in 1990. He submitted photographs that were marked into evidence as P-1 through P-4. The photos show Mr. Giordano's truck and boats parked on the vacant lots. He recalls the kids playing on the vacant lots, a neighborhood yard sale at least once, boat storage and Mr. Giordano had a garden for a least two summers.

Harry Young, 11 Ventnor Avenue, Beesleys Point, was sworn in. His property abuts the applicant's property. He submitted photographs from January 2007 that were marked into evidence as Exhibits P-5 through P-12. The photos show tire tracks on the vacant lots, boats and storage trailers. He testified that a trailer was parked on the lots and

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someone was staying in there for a short period of time. He recalls vehicles and boats being for sale on the lots. There have also been numerous yard sales on these lots.

Mary Fitzpatrick, 1 Ventnor Avenue, Beesleys Point, was sworn in. She has owned this property since 1978. She testified that Walter Camp farmed on the vacant lots. He lived in the house on lot 23.01. He had birdhouses on top of the posts that are still in the ground. In her opinion Mr. Camp used the three lots as one lot.

Mr. Facenda stated that in order to make the determination if the lots have merged there needs to be separate lots, undersized lots, contiguous, front on the same street and be in common ownership. If all five factors are satisfied the three lots merge together. In order to separate these lots a subdivision is needed and variance approval. The applicants are seeking to create two new less conforming lots. The lots are separate and all on the same tax bill. The lots were acquired by the same deed. All the lots are undersized. The lot is less than 50 percent deficient in lot area. There is less than 140 ft. of width and frontage. The lots are 43 percent deficient in depth since there is only 100 ft. where 175 ft. is required. He believes at least 10 variances are needed to develop the property if they decide to pursue the subdivision.

Mr. Facenda believes the application by Myrtle Young is completely different since the lots were both buildable under the grandfather clause. The Giordano property does not fall under the grandfather clause. For that reason they are clearly different and clearly distinguishable from the decision the board made for Myrtle Young. He stated that it makes no difference how the lots were created.

Mr. Facenda stated that the three properties were treated as one. There were several activities that took place on the lots during the years. If a fence separated the lots it may have changed his mind.

Hugh O'Donnell, 421 North Shore Road, was sworn in. He has lived here since 1986. He contends that the lots were always used as one lot. He submitted an original lease from former tenants. Nowhere in the lease does it indicate the tenants are only permitted to use the lot the house is situated on. The lease was marked as Exhibit P-13. The lease is dated 8/31/1999. He submitted a bill for maintaining the lawn for the tenants. The bill was marked as Exhibit P-14. He has witnessed the landscapers mowing all three lots. He stated that the emergency well referred to by the applicant was there for 13 years.

Mr. Lisitski stated that the Giordano's do not know everything their tenants did. He once again referred to case law and the Myrtle Young application. He stated that there are two different tracts no matter how many deeds. He stated that none of the uses that occurred on the property made it become one lot. He believes there is no way that 6 or 7 variances are needed. They meet every setback requirement. A septic design has been approved. There is city water. There is only one variance needed for an undersized lot.

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Mr. Facenda stated that the case law that has been discussed states that the lots were separately acquired and the borough treated these lots as two separate lots. The township has always treated these lots as one lot.

Mr. Lisitski stated that the township shows three lots on the tax map. There are separate legal descriptions for the lots.

Mr. Giordano further testified that he purchased the property in two tracts. There was a separate legal description. He does not recall what the poles in the rear of the property were used for. He has never used the electrical outlet on the pole or the spigot. He never thought to put a fence down the lots to make a distinction between the lots.

Mrs. Fitzgerald stated that Mr. Camp used to water his vegetable garden with a hose that was hooked up to the pole.

Solicitor Marcolongo discussed case law. He also gave his opinion as to how the board voted on the Myrtle Young application. He believes the board must determine if there are adjacent or contiguous lots, are they fronting on the same street, are the lots undersized under the current zoning regulations and are the lots in common ownership. The meeting was open to the public. It is his legal opinion that the three lots have merged, constitutes one single tract of land and that the applicant must go to the planning board for subdivision approval in order to proceed with this development. The applicants have received one deed and one tax bill since the time of purchase. All three of the lots are undersized. All together the lots are still undersized. All the lots are contiguous. All three lots front on Route 9.

The board was asked for their findings of fact.

MR. SHAWL – Giordano and Maria Giordano are the owners of Block 668, Lots 21, 22, 23.01. They are before the board requesting an interpretation as to whether these lots have merged into one parcel or if there are two separate tracts. The Giordano's purchased the property in 1988 from a common owner. The lots have been in common ownership since 1957. The Giordano's purchased both properties at the same time. Lot 23.01 was created by deed and 21 & 22 were created by plat. The lots are not buildable lots individually and do not meet the township standards. A number of variances would be needed to develop the lots. The Myrtle Young application was referenced throughout the application. There are some similarities and some differences. The similarities are that Myrtle Young's lots were next to each other and fronted on the same street. The owner always intended to keep them separate. The lots were created by deed like Lot 23.01. The Myrtle Young lots were buildable under the grandfather clause. Her lots were not acquired at the same time. Mr. Giordano gave testimony that the property is identified as two separate tracts on one deed and there is one tax bill. The lots are contiguous and they all front on Route 9. Mr. Maffei provided testimony that the concrete lids may have been a gray water system for lots 23.01. Septic approval was obtained from the Cape May County Health Dept. for a septic on lots 21 & 22.

Information was presented regarding the lot size. All three of the lots are undersized as is a majority of the lots in the neighborhood. Most of the lots have houses on them. There was public testimony that ancillary uses from the primary uses that occurred on Lots 21 & 22. Much evidence was placed on file regarding the previous leases and the location of the well on lot 22 that served the house on Lot 23.01. Lots 21 & 22 do not meet the grandfather clause. The current lot size was adopted in 1986.

MRS. BURGIN – The land was consolidated into one area measuring 150 ft. x 140 ft. according to the official tax map. The property was purchased from the Camp's. The well on the property was installed approximately 13 years ago. The well is located on lot 22. She believes this is a connection between Lot 23.01 and Lot 22. There was testimony by the neighbors that there were yard sales, playhouse, parties, etc. on the vacant lot. There was testimony that the applicant's garden was on the vacant lots along with boat storage. Both of Myrtle Young's lots were buildable according to the grandfather clause. The Loechner doctrine seeks to consolidate smaller undersized lots and make them more conforming to the township zoning. It is her belief that the township committee should be the determining factor as to whether or not the lots are separated.

MR. KLEPAC – The board gave considerable time to the applicants. The lots are deficient in many aspects. The lots do not fall under the grandfather clause.

MR. PIERSON – As presented there are many similarities to the Myrtle Young case, however each case is considered individually on their own merits.

A motion to approve the application to determine that the lots have not merged was made by Mr. Bergus and seconded by Ms. Petrozza. In favor: None. Opposed: Bergus, Burgin, Klepac, Shawl, Phifer, Petrozza, Pierson.

RESOLUTIONS

1. 1292 SOUTH SHORE ROAD, LLC – BLOCK 566, LOT 36.02

A motion to adopt the resolution was made by Mrs. Bergus, seconded by Mr. Klepac, and approved.

2. JOSEPH A. COFFEY – BLOCK 835, LOT 12

A motion to adopt the resolution was made by Mrs. Bergus, seconded by Mr. Shawl, and approved.

3. MICHAEL L. PODOLSKY – BLOCK 791, LOT 49

A motion to adopt the resolution was made by Mrs. Bergus, seconded by Mrs. Petrozza, and approved.

4. KEVIN & MAUREEN SHERIDAN – BLOCK 756, LOT 3

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A motion to adopt the resolution was made by Mrs. Bergus, seconded by Mr. Klepac, and approved.

5. JOHN & MARY SCHMELZER – BLOCK 842, LOT 1 – BA02-07

A motion to adopt the resolution was made by Mr. Shawl, seconded by Ms. Petrozza, and approved.

6. HOLLYBERRY L.L.C. – BLOCK 453, LOT 182.03 – BA41-06

A motion to adopt the resolution was made by Mrs. Bergus, seconded by Mr. Shawl, and approved.

RICHARD & SHANNON BROSCHARD – BLOCK 466, LOT 1 – BA35-06

A motion to adopt the resolution was made by Mrs. Bergus, seconded by Mr. Klepac, and approved.

BILLS

A motion to approve the bills was made by Mr. Klepac, seconded by Mr. Phifer, and approved.

ADJOURNMENT