

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
APRIL 2, 2009**

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: Mary Jean Burgin, Ted Klepac, Christopher Phifer, Jeffrey Pierson, Andrew Shawl, Lynn Petrozza, Kenneth Yakopcic, Chairman Paul Casaccio.

Absent: Matthew Unsworth.

Also in attendance were Dean Marcolongo, Board Solicitor, Charles Kona, Acting Board Engineer; Shelley Lea, Secretary and Zoning Officer.

APPROVAL OF THE MARCH 12, 2009 MEETING MINUTES

A motion to approve the minutes was made by Mr. Klepac, seconded by Mr. Pierson, and approved.

SWEAR IN BOARD PROFESSIONALS

TABLED APPLICATIONS

Chairman Casaccio announced the following applications have been tabled and will be listed on the May 14, 2009 meeting agenda. The applicants have agreed to waive the tolling of time. There will be no further notice required.

1. ROBERT & ELLEN BARKER – BLOCK 856, LOTS 5 & 6 – BA08-09
2. JOSEPH BOLAND – BLOCK 791, LOT 17 – BA09-09

APPLICATIONS

1. SEAN & ELIZABETH CONNELL – BLOCK 348, LOT 93 – BA03-09

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Applicants are requesting a use variance and a height variance to permit a 50 ft. tall wind turbine at 1441 Route 50, Petersburg.

Sean Connell, 1441 Route 50, Petersburg, New Jersey, was sworn in. He testified they are proposing to install a SKYSTREAM 3.7 windmill for the purpose of renewable energy. There is an interconnect that connects to the power box to make it go backwards. He would like to do something that produces green energy. They have obtained a grant that will cover 2/3 of the costs. His property is 2.799 acres and is adjacent to a large hay farm owned by his in-laws.

The height of the windmill is 50 ft. to the middle of the blades. The actual height of the structure is 56 ft. If the tower were to fall it would fall onto his property. The windmill would be located in the front yard since there are no trees in this area. There is no wind in the back yard because of the big oaks trees.

Solicitor Marcolongo stated that the windmill is an accessory use since it does not meet the definition of an accessory use in the ordinance. A use variance is needed since the use is not permitted in the zone, a use variance to allow 2 principal uses on one lot and for a principal use over 10% of the permitted height allowed in the zone. A variance is not needed to allow the structure in the front yard.

Mr. Kona recommended the applicant revise the plan to include the side yard setback and the distance between the turbine and the access easement.

There was discussion concerning windmills and the proposal made by the Planning Board to Township Committee. There was also discussion concerning the effect that windmills have on birds and/or bats.

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

MR. PIERSON –Sean and Elizabeth Connell of 1441 Route 50 in Petersburg, New Jersey, Block 348, Lot 39, have come before the Board to request use variances to permit a Skystream 3.7 windmill on their property. A Use variance is needed for the height of the structure since it is over 10% of the permitted height for a principal structure and a use variance to allow 2 principal structures on one lot. The windmill would measure approximately 56 ft. to the top blade. The windmill would help to produce green energy. The property consists of 2.7 acres. The windmill would be located 1,100 ft. from Route 50. His family owns 40 to 50 acres that surrounds the property. There is no immediate impact on any neighbors. The plans will be amended to show the distances required by Mr. Kona to secure the exact location of the windmill. There has been discussion as to possible damage to bats and birds. There is a fall zone and in case of a disaster the tower would not fall onto any structures. The windmill cannot be located in the rear of the property because of the large oak trees. As of this time the Planning Board has not come up with a draft ordinance that the Township Committee would approve. There was no public testimony.

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MR. YAKOPCIC – He believes we need alternative energy. The turbine meets the positive criteria.

MRS. BURGIN – She believes the request complies with special reasons NJS40:55D-2 (g), (j) and (n). She believes the application can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning plan.

MS. PETROZZA – She concurs.

MR. SHAWL – The property is located in an AR zone.

MR. KLEPAC – He concurs.

MR. CASACCIO – He concurs. There was no public comment.

A motion to grant the application with the standard conditions was made by Mr. Pierson and seconded by Mr. Klepac. In favor: Burgin, Klepac, Phifer, Pierson, Shawl, Petrozza, Yakopcic, Casaccio.

2. STEWART & MARION SEGIN – BLOCK 324, LOTS 25 THROUGH 30 – BA25-08

Applicants are requesting a use variance and height variance to allow a 113.5 ft. tall wind turbine along with a variance for the distance between the accessory garage and proposed turbine at 212 New Jersey Avenue, Tuckahoe.

Stewart and Marion Segin, 212 New Jersey Avenue, Tuckahoe, New Jersey, were sworn.

Mr. Segin testified the purpose of the windmill is to help reduce the carbon footprint in New Jersey. The turbine would be 113.5 ft. to the top of the blade. The turbine needs to be this high since woods surround their property. The turbine will help to reduce their electric bill, which averages about \$800 per month.

The tower they have chosen has 3 legs similar to a cell phone tower and is rated for a 120 mile per hour wind. Each leg is grounded into the ground. If the tower fell it would not fall onto the neighbor's property. His 100 ft. x 150 ft. property is located in the AR zone. They chose this location since it is furthest from the neighbor's house. The Township owns the property directly behind him. The base of the tower is 10 ft. x 10 ft.

The meeting was open to the public. Hearing no response the meeting returned to the Board.

Mr. Kona testified the applicant would require an 80 ft. front yard setback where 50 ft. is proposed. The rear yard setback required is 100 ft. where 50 ft. is proposed. The side yard setback requirement is 50 ft. where 25 ft. is proposed.

Solicitor Marcolongo commented in addition to the setback variances a use variance is needed for 2 principal uses on the property, the height of the tower and the use not permitted in the zone.

The Board was asked for findings of fact.

MR. PIERSON – Stuart and Marion Segin of 212 New Jersey Avenue in Block 324, Lots 25 through 30, have applied for variances to install a 113.5 ft. wind turbine. The purpose is to reduce the carbon footprint and their electric bills. They will remain on the grid. The tower is rated for a wind speed of 125 mph. The tower is designed so that it would bend into itself if it were to collapse. If it were to fall it could hit the house, trees or street. It is not being placed where the neighbor's houses would be in danger. The Township owns the property in the rear. D variances are needed since the use is not permitted in the zone, 2 principal uses on the lot and to allow the height of the structure to exceed 10% of the permitted height. The applicants are requesting C variances for front, rear and side yard setbacks. There are concerns due to the lack of a fall zone the tower could fall into the house. There was no public comment.

MRS. BURGIN – She does not feel the variances should be granted due to the small size of the lot. She does not feel the variances could be granted without detriment to the public or zoning plan.

MR. SHAWL – The location of the tower would cause a shadow onto the neighbor's property. The property is located in the AR zone. He is not sure the turbine is a good idea.

MR. KLEPAC – The Solicitor has indicated there would be no precedent set since each application is based on its own merits.

MR. PIERSON – He is concerned about the safety of the applicant and the neighbors if the structure were to fail. He is not in favor of the application.

MR. CASACCIO – He is in favor of the application. He is in favor of going green. He believes the variances can be granted in compliance with special reason "n". This is a unique lot since there are no neighbors on the sides. He feels the proposed wind turbine is an inherently beneficial use.

The applicants requested to continue the application to the May 14, 2009 meeting in order to provide additional information to the Board. There will be no further notice.

3. KRISTINA WRIGHT – BLOCK 348, LOT 84 – BA01-09

Application is for major final subdivision approval of a proposed 4 lot subdivision at 1581 Route 50, Petersburg.

Ms. Wright was not present at the meeting. The Board requested the Board Secretary forward a letter to Ms. Wright indicating that the application has been rescheduled until the May 14, 2009 meeting.

4. MARK KABBEKO – BLOCK 732, LOTS 4 & 5.01 – BA02-09

Application is for a use variance to construct an addition to a single-family dwelling located in the TCC zoning district, variances for lot area, lot frontage, lot width, lot depth, front, side and rear yard setbacks and parking at 17 Norwood Road, Marmora.

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Mark Kabbeko, 238 Timber Ridge Road, Morgantown, PA, was sworn. He testified that he is proposing to construct an addition to an existing dwelling in the TCC zone. The house is in poor shape and he is trying to rebuild it. The improvements would be a benefit to the neighborhood. The neighborhood is mostly residential homes with some commercial. The addition would be compatible to other homes in the area.

Mr. Kabbeko testified that the one story home will become 2 stories and the addition will also be 2 stories. The addition will have vinyl siding, asphalt roof and energy efficient windows.

Mr. Kabbeko testified he would like to demo the existing structure and build a new building, however the lot is small and there is no room to expand or install a new septic that would conform to today's standards. A copy of the hand drawn plan showing the location of the house, septic and parking was marked as Exhibit A-1. There was discussion concerning the driveway width. A variance was added to allow a 24 ft. curb cut where only 16 ft. is permitted. Mr. Kabbeko agreed to a condition to consolidate the lots.

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

MR. PIERSON – Mark Kabbeko, 17 Norwood Road, Marmora, NJ, Block 732, Lots 4 & 5.01 is requesting a use variance to construct an addition to a single-family dwelling in a TCC zone. This is a pre-existing non-conforming use. This is an older home that does not meet the current setbacks. The applicant is proposing to rebuild the home and bring it up to the current standards. He proposes to construct a second floor. The house would conform to other homes in the area. He is not able to relocate the house to meet the setbacks due to the septic requirements. He has agreed to file a deed of consolidation. A variance is needed to allow a 24 ft. curb cut.

MRS. BURGIN – There was no public comment. Lots 4 and 5.01 will be consolidated. The proposed addition will improve the appearance of the house. She believes the application can be granted without substantial detriment to the public good and will not substantially impair the intent or purpose of the zoning plan or ordinance.

MR. SHAWL – Although the property is located in the TCC zone he feels the use is appropriate since there are other residences on the street.

MR. CASACCIO – The property is serviced by city water. Granting the variance for the driveway width will provide on site parking for 2 cars.

A motion was made by Mr. Pierson and seconded by Mr. Shawl, to approve the application with the amendments and the standard conditions along with the condition that the applicant files a deed of consolidation. In favor: Burgin, Phifer, Klepac, Pierson, Shawl, Petrozza, Yakopcic, Casaccio.

5. RALPH & DEANNA HOLT – BLOCK 652.01, LOT 19 – BA07-09

Application is for a use variance for the expansion of a non-conforming use to permit 6 tables in the first floor bagel shop, existing lot size, depth and impervious coverage, revised site plan approval and revisions to parking, trash enclosure, drainage and buffering at Ralph's Bagels, 121 Tuckahoe Road, Marmora.

Ralph and Deanna Holt, 50 Jill Avenue, Marmora, were sworn. Vincent Orlando, Professional Engineer, was sworn along with Paul Dietrich, Board Engineer.

Solicitor Marcolongo stated that he marked a colorized version of sheet 2 of 6 of the plan by EDA dated 3/3/09 and revised 3/23/09 as Exhibit A-1. A colorized version of sheet 2 of 6 originally dated 1/4/07 and last revised 1/30/07 as Exhibit A-2. He stated that before the Board can listen to the merits of the case they must first decide if they have jurisdiction to hear the application based upon res judicata. He gave the Board a brief history of the previous applications made by the applicant.

Mr. Orlando testified they were before the Board in 2008 seeking modification to the site plan. At that time the Board determined that res judicata applied since the application was not substantially different. He believes the current application is substantially different. The proposed plan no longer includes a catering facility on the second floor. The configuration of the parking area has been changed to include an ingress drive along Tuckahoe Road and additional parking spaces to total 36 spaces. The changes to the site plan include reconfiguration of the retention basin, relocation of trash enclosure, and the ingress. He feels this plan is substantially different than the plan denied in 2007 and that res judicata does not apply.

Mr. Orlando testified the number of light fixtures has not changed, however the positioning has changed. The landscape buffering along Lot 18 is the same as proposed in 2007. He stated landscaping in the front of the property has been removed so that it does not collect trash.

Mr. Holt revised the hours of operation to 7 am until 10 p.m. where the hours of operation on the previous site plan were 6:30 a.m. until 4 p.m.

The meeting was open to the public.

Mark Stein, Esquire, represented Keith and Sally Jack owners of Lot 16 and Wayne Jack owner of Lot 18. Mr. Stein feels the Board has no jurisdiction to hear the application at this time since the amended hours were not included in the notice. He feels the change is both substantial and detrimental to the neighbors.

Mr. Holt withdrew the request to amend the hours of operation.

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Mr. Stein referenced the prior resolution stating that the only significant change is the ingress.

Rev. Robert Gregorio, 200 W. Tuckahoe Road, Marmora, was sworn. He supports the applicant's proposal to expand. He feels there are substantial differences between the previous application and this application. He testified that he has not looked at either of the submitted plans.

James Ginn, 107 Tuckahoe Road, Marmora, was sworn. He feels the additional entrance and parking spaces make a substantial difference. He owns a vacant 50 ft. x 100 ft. parcel adjacent to the Jack's property.

John Coggins, 12 Coventry Lane, was sworn. He believes the additional ingress is a substantial change and he concurs with Mr. Ginn's testimony.

Scott Georgetti, 828 Stagecoach Road, was sworn. He concurs with what has been said so far. He feels the entry way is a big change along with the upstairs.

Al Marcelli, 11 Hummingbird Lane, Petersburg, was sworn. He believes the ingress and egress is a substantial difference.

Thomas Drinkard, 4 N. Alexis Road, Seaville, was sworn. He concurs there is a substantial difference. He stated that the additional parking is a difference of 9% and is more than substantial along with the additional driveway.

James Hamilton, 140 Perry Road, Petersburg, was sworn. He believes the second driveway is a substantial change.

Kevin McGonigle, 13 Foxborough Road, Seaville, was sworn. He concurs that the application is substantially different than the first one.

Jean Dubois, 83 Point Road Marmora, was sworn. She agrees this is substantially different.

David Wurtz, 34 Hilltop Drive, Marmora, was sworn. He concurs that the plans are substantially different.

Patricia Maniscalco, 20 Somers Avenue, Seaville, was sworn. She agrees the plan is substantially different.

Normand Mullen, 5 Ortlieb Lane, Seaville, was sworn in. He concurs that the changes are substantial.

Lou Northrup, 640 Stagecoach Road, was sworn. He concurs the changes are substantially different.

Bob Scherer, 897 Route 50, Petersburg, was sworn. He agrees that the driveway is a substantial change.

David Birch, 28 Somers Avenue, Seaville, was sworn. He concurs the changes are substantially different.

Hearing no further comment the meeting was closed to the public and returned to the Board for findings of fact.

MR. SHAWL – Ralph and Deanna Holt, owners of Block 652.01, Lot 19, located at 121 Tuckahoe Road, Marmora. The applicant is seeking a determination as to whether or not res judicata applies and if the application being presented is substantially different than BA01-07 that was denied by the Board. Vincent Orlando has provided testimony on behalf of the applicant and his opinion is the application is different since there is no change to the 2nd floor. The Board previously denied a request to use the 2nd floor as a catering business. The additional driveway is a change since the site currently has only 1 ingress/egress. There are additional parking spaces being added as well as the change to the storm water basin and landscaping. The lighting is being changed slightly. The applicant does not propose to change the hours of operation, which are currently 6:30 a.m. until 4:00 p.m. Testimony was heard by several members of the public. Mr. Stein argued that res judicata would apply in this case since the use variance is substantially similar. The public has testified they believe the additional ingress/egress is substantially different and that res judicata does not apply.

MS. PETROZZA – She agrees with Mr. Shawl. She believes there are a lot of similarities but she does believe the additional driveway and the elimination of the proposed 2nd floor catering use is a substantial change.

MRS. BURGIN – Mr. Stein argued that the change from 33 to 36 parking spaces is not a substantial change. He read the findings of the Board from Resolution BA21-08, page 5, paragraph 12. There was substantial testimony from the public that the additional driveway is a substantial change.

MR. YACOPCIC – He concurs.

MR. PHIFER – There was substantial testimony from the public that there is a substantial change to the plans. No one from the public testified that there was not substantial change.

MR. PIERSON – In comparing the changes from BA01-07 he feels the 2nd floor use is a substantial change. Other changes include the additional 3 parking spaces, moving the trash enclosure, reducing the size of the basin by approximately 25%, the second ingress/egress. For these reasons he feels there is a substantial change.

MR. KLEPAC – He feels the new shopping center is a change.

MR. CASACCIO – He concurs with Mr. Pierson. He feels the elimination of the use variance for catering on the 2nd floor and additional driveway is a substantial change.

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A motion was made by Mr. Pierson and seconded by Mr. Klepac, that the application is substantially different and that the Board has jurisdiction to hear the application. In favor: Burgin, Klepac, Phifer, Pierson, Shawl, Petrozza, Casaccio.

The application was tabled until the May 14, 2009 meeting. The applicant agreed to waive the tolling of time.

BILLS

A motion to approve the bills was made by Mrs. Burgin, seconded by Mr. Shawl, and approved.

CLOSED SESSION

A motion to go into closed session was made by Mr. Pierson, seconded by Mr. Klepac, and approved. The Board went into closed session at 10:20 p.m.

ADJOURNMENT

A motion to adjourn the meeting was made by Ms. Petrozza, seconded by Mrs. Burgin, and approved. The meeting was adjourned at 10:30 p.m.

Submitted by,

Shelley Lea