

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
JUNE 11, 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.

OPEN PUBLIC MEETING NOTICE

SALUTE TO THE FLAG

ROLL CALL

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

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

TABLED APPLICATIONS

The following application was tabled until July 9, 2009 at the applicant's request. The applicant agreed to waive the tolling of time. Notice of this application will be published and certified mailings will be sent to everyone within 200 ft.

1. ALL ACTION WATER SPORTS, INC – BLOCK 558, LOT 27 – BA16-09

APPLICATIONS

1. T & R, LLC – BLOCK 348, LOT 1.01 – BA05-09

Application is for amended site plan approval, use variance for expansion of a non-conforming use, lot area, lot depth, front, side and rear yard setbacks, to raise the existing triplex/marina at 2 Meadowview Lane, Tuckahoe.

Robert Herman, Esquire, represented the applicants. Joseph Maffei, Professional Engineer, was sworn.

Mr. Maffei submitted 2 aerial photographs of the subject property that were marked as Exhibits A-1 and A-2. He testified the applicants are proposing to renovate the structure and place additional pilings underneath. The applicants intend to relocate the 3 apartments to the 2nd floor since the bottom floor floods. The 1st floor would be utilized as storage, washing facilities and an office for the marina. Each of the apartments has only 1 bedroom. The height of the building would remain 26.4 ft where 35 ft. is permitted. The footprint of the building would not be changed. There are 10 on site parking spaces.

Mr. Maffei testified the structure is similar in size to the other homes on the road and has similar setbacks. They are currently working on obtaining permits from the DEP for work along the waterway and improving some of the bulkheads. The aesthetics of the property would be greatly improved. He believes the variances can be granted without impairing the intent and purpose of the zoning plan or zoning ordinance since they are still providing a residential use. He feels the site is particularly well suited as a marina since it is located on the Tuckahoe River. This would be an enhancement to the foot of the bridge where a lot of activity takes place.

Solicitor Marcolongo stated that marinas are not a permitted use in the (TR) Tuckahoe River zoning district. In 1995 the owner of the property at that time was before the Board requesting an interpretation that they were a pre-existing marina. The Board determined they were not. They would need to obtain a use variance and site plan approval to be deemed a marina. There was discussion as to whether or not the owner came back before the Board to obtain a use variance.

Mr. Herman stated it is the applicant's opinion that a variance was granted at some point to allow the marina.

Mr. Dietrich stated the definition of the marina is broad and permits many services that do not take place on the site. He feels that a marina cannot be approved without a site plan. His understanding of the operation is that they rent boat slips and launch boats. He is not aware of any other marina type uses taking place on the site. The clause that that was placed in the ordinance in 2002 in regards to this specific Block and Lot was removed in 2007.

Solicitor Marcolongo felt it would be appropriate to table the application and investigate whether or not there were any additional approvals granted. He believes a use variance is needed to permit a use that is not permitted in the zone and for expansion of a non-conforming use, specifically the multi-family residence.

Mr. Herman requested to table the application until July 9, 2009. The applicant agreed to waive the tolling of time.

2. JAMES GINN – BLOCK 652.01, LOT 17 – BA11-09

Applicant is requesting variances for lot area, lot frontage, lot width, lot depth, side and rear yard setbacks, maximum building coverage and landscape buffer at 105 Tuckahoe Road, Marmora.

Thomas Hillegass, Esquire, represented the applicant.

Joseph Maffei, Professional Engineer, was sworn. Mr. Maffei was present to review the variance plans by EDA dated 2/11/09 for the construction of a 24 ft. x 42 ft. single-family dwelling on a 6,250 sq. ft. lot.

James Ginn, 9 Magnolia Court, Ocean View, New Jersey, was sworn.

Mr. Hillegass stated that buy/sell letters were sent to the owners of Lot 16. A copy of the buy/sell letter, dated May 20, 2009 was marked Exhibit A-1.

Mr. Ginn testified he is the owner of the property along with his son. He has owned the property for 1 year. He stated the area is mixed use. He is proposing a small single-family residence on the lot for his son to live in. This is the smallest lot in area. He purchased the property knowing that it was undersized. He stated that he is a realtor and is familiar with lots that are non-conforming. He feels the proposed house is compatible with the neighborhood.

Mr. Maffei testified the property is located in a Residential zone. He described the area consisting of commercial and residential uses. The lot does not qualify under the grandfather clause since there is less than 20,000 sq. ft. The lot has existed since 1924 according to the deed. The lot is 6,250 sq. ft. where 40,000 sq. ft. is required. They have tried to position the house on the lot using the setbacks contained in the grandfather clause. The lot would be serviced by public water and their septic system has been approved. They have also obtained soil erosion approval. He feels the applicant meets the positive criteria since the proposed use is not a detriment to the zone plan. He feels that a single-family dwelling at this location would have no be a negative impact.

Mr. Maffei testified the lots in the area range from 20,000 to 40,000 sq. ft.

The meeting was open to the public.

Sally Jack, 44 Stagecoach Road, Marmora, was sworn. Mrs. Jack is the owner of Lot 16. They tried to buy the lot 3 times since they built their home in 1979. The previous owner contacted her in 2003 when they inherited the property. At that time she thought they wanted too much money. She feels the proposed house is not a benefit to the neighborhood and is not good zoning. She is concerned about property values. She feels the bathroom downstairs leaves the potential to convert it into living space. She is concerned about privacy. She has lived at this location since 1980. Her lot is approximately 37,200 sq. ft. She is not interested in purchasing the property at a price as if it was a buildable lot and the variances were granted. She feels the lot is not suitable to be built on and she objects to the application. She would like the lot to remain wooded to block the view of the post office.

Wayne Jack, 115 Tuckahoe Road, Marmora, was sworn. Mr. Jack is the owner of Lot 18. He stated there are many buildable lots and houses for sale in the Township. He feels the variances should not be granted since the applicant knew this was an unbuildable lot when he bought it. The applicant purchased the lot as an investment and now he wants to put a house on it. The lot does not meet any of the standards in the zoning ordinance. He feels the applicant should not be able to build a house on the lot. He has lived at this address since 1980.

Michelle Jack, 115 Tuckahoe Road, Marmora, was sworn. Mrs. Jack asked about the driveway. She is concerned about the traffic on the road and safety since this is a dangerous road. Mr. Maffei stated the vehicles could make a k-turn so they don't have to back out of the driveway.

Keith Jack, 44 Stagecoach Road, Marmora, was sworn. Mr. Jack feels that constructing a house on the lot would be a detriment to the property values. There are many lots in the Township for sale that could be built upon. He stated the neighborhood is comprised of small houses on large lots. The big house on their corner that received variances to construct is still empty and for sale. A report done previously by a professional hired by the Township indicated the houses in the area are small compared to the lots. He feels this is a big house on a very small lot. A use variance was given for a bagel shop to be built on the block. He feels the block will look like Ocean City soon.

Robert Lea, 46 Stagecoach Road, Marmora, was sworn. Mr. Lea feels that granting the variances would set a precedent. He referred to the big house that was built on the corner on a small lot.

Hearing no further comment the meeting was closed to the public. The Board was asked for their findings of fact.

MR. UNSWORTH – James Ginn recently purchased Lot 17 in Block 652.01. The lot is 50 ft. x 125 ft. The lot is non-conforming and surrounded on 3 sides by Lot 16. Several bulk variances are needed. The applicant has testified they have obtained permits for septic, water and soil erosion. The lot has existed since 1924. The lot is not similar in size to any of the surrounding lots. This is a mixed-use area. To his knowledge the zoning has never permitted development on a lot this size. Several neighbors testified they are not in favor of the application. They are concerned the lot does not match the neighborhood and is not consistent with other homes in the neighborhood. The owner of Lot 16 testified she would be interested in purchasing the lot but not for the price of a buildable lot.

MR. PIERSON – He is greatly concerned that the driveway would be located approximately 60 ft. from one of the worst high accident intersections in the Township.

MR. KLEPAC – Solicitor Marcolongo indicated the positive criteria have been met.

MR. SHAWL – He feels that a 2-story house on the lot would affect the light, air and open space on such a small lot. He feels that another driveway in this already congested area would be a detriment to the public. The lot is too small to qualify under the grandfather clause. This is the smallest lot in the neighborhood.

MS. PETROZZA – the Board has heard significant public testimony that the house would be a detriment to the community and that the lot does not conform to the area.

MRS. BURGIN – The applicant testified that he bought the lot knowing it was undersized. The proposed dwelling is not compatible to others in the neighborhood. The lot would need to be at least 20,000 sq. ft. to meet the grandfather clause and the lot is only 6,250 sq. ft. She doesn't believe the variances can be granted without substantially impairing the intent and purpose of the zone plan.

MR. YAKOPCIC – The applicant testified the property would not be used as a rental.

MR. CASACCIO – He concurs. The lot was purchased in the late 2000's. The applicant is a professional realtor. He concurs it would be a detriment to the zoning plan and zoning ordinance. He is not in favor of granting the application.

A motion to grant the application was made by Mr. Klepac and seconded by Mr. Pierson. In favor: Klepac. Opposed: Burgin, Phifer, Pierson, Shawl, Unsworth, Casaccio.

3. ALBERT PASSAMENTE – BLOCK 758, LOT 11 – BA12-09

Applicant is requesting a rear yard setback variance for the construction of a single-family dwelling and a variance for the height of the retaining wall in the front yard at Taylor Avenue, Strathmere.

Albert Passamente, 855 Hamilton, Drive, Lafayette Hill, PA, was sworn in along with Cynthia Chemerys, Licensed Professional Engineer.

Ms. Chemerys was present to review the Variance Plan by MV Engineering, dated 4/20/09 and last revised 5/19/09. Ms. Chemerys testified the applicant is proposing a 3-bedroom dwelling. The application meets all the standards in the zone except for the rear yard setback. A septic permit and treatment works approval from the NJDEP have been obtained. A letter of no interest has been obtained from the DEP regarding CAFRA. The dwelling will not encroach into the coastal wetlands in the rear of the property.

Ms. Chemerys stated the actual rear of the house will meet the setback, however the deck will require a setback variance to be located 20.84 ft. from the rear property line. The proposed setback is comparable to the neighbors. The deck will not be enclosed to maintain light, air and open space.

Ms. Chemerys stated that the retention wall in the front yard would be 7 ft to 8 ft. high. The ordinance allows walls to be only 4 ft. high in the front yard. The septic system must be located in the front yard due to the location of the septic on Lot 10. Since the septic would be located in the front yard the house needed to be moved back requiring the need for a setback variance. She feels this will not have a detrimental affect on the area. She feels that granting the variances would not impair the intent or purpose of the zoning plan.

Mr. Passamente stated the bulkhead would be plastic. He agreed as a condition of approval to install a landscape buffer with indigenous shrubbery satisfactory with Mr. Dietrich.

Mr. Dietrich stated that curb and sidewalk are not needed.

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

MR. SHAWL – Albert Passamente is the owner of 758 Taylor Avenue in Strathmere, New Jersey. The property is known as Block 758, Lot 11 and is located in the Resort Residential zone. Mr. Passamente is requesting a rear yard setback variance to allow the rear deck to be 20.84 ft. where 30 ft. is required. The actual dwelling meets the setback requirement. Special reasons for granting the variances include adequate light, air and open space. The height of the retaining wall is 7 ft. to 8 ft. above existing grade. The applicant has agreed to a landscaped buffer around the wall. The height of the wall is dictated by code and is needed for the septic

system. The septic will be located in the front yard to maintain the required distance from the neighbor's septic. He finds that granting the requested variances would not impair the intent and purpose of the zoning plan. The proposed house is similar to others in the neighborhood.

MRS. BURGIN – Since the rear deck is 18” above grade it requires a variance. The front yard setback is greater than required. The applicant in consultation with the Township Engineer, will plant a landscape buffer in front of the wall. She feels the variances can be granted without substantial detriment to the public good and will not impair the intent and purpose of the zoning ordinance.

MR. YAKOPCIC – Agrees.

MR. UNSWORTH – Concurs.

MR. PIERSON – Believes the application can be granted due to the exceptional shallowness of the lot and the topography conditions of the property.

MR. KLEPAC – Concurs.

MR. CASACCIO – Concurs. There was no public comment.

A motion was made by Mr. Pierson and seconded by Mr. Unsworth, to grant the application with the standard conditions and that a landscape buffer is installed that meets the approval of the Township Engineer. In favor: Burgin, Klepac, Phifer, Pierson, Shawl, Unsworth, Casaccio.

4. DOROTHY OSLIN – BLOCK 754, LOT 2 – BA15-09

Applicant is requesting variances for lot area, lot frontage, lot width, lot depth, front, side and rear yard setbacks, building coverage and impervious coverage to raise an existing structure at 2804 Commonwealth Avenue, Strathmere.

Dorothy Oslin, 925 Dover Road, West Deptford, New Jersey, was sworn in along with James E. Chadwick, Professional Planner.

Mrs. Oslin testified she has owned the property for 31 years. Her husband had a stroke and the house currently is not handicap accessible. She is proposing to renovate the dwelling and raise it to meet flood elevation.

Mr. Chadwick was present to review the plan he prepared dated 4/26/09. He testified maintenance on the dwelling is a significant issue due to Mr. Olin's physical difficulties. Mr. Oslin is not able to access the structure at all. Part of the renovations will include lifting the building and adding a garage area underneath with an elevator. The interior

and exterior of the structure will be renovated. The deck on the rear of the dwelling will allow Mr. Oslin to enjoy the outdoors.

Mr. Chadwick testified for many years the property was zoned Resort Residential, however it was recently changed to a Conservation zoning district during a Master Plan Reexamination. It is his understanding that it was never the intent of the Planning Board to make this change. If the property were still zoned “RR” only a lot coverage variance would be needed. The habitable footprint of the structure is not changing. The increase in building coverage is for the deck and the stairs.

Mr. Chadwick submitted photos of the structure that were marked as Exhibits A-1, A-2, and A-3. He stated the proposed renovations would provide a significant aesthetic enhancement for the owner and the neighborhood. Additional photos marked A-4 and A-5 show other homes in the area. He feels the proposed structure is compatible to the type and size of other homes in the neighborhood. He believes the Board can grant the variances without substantial detriment to the public good and without impairing the intent and purpose of the zoning ordinance or zoning plan.

Mr. Dietrich commented that the zone change was a drafting error. There error occurred during the conversion of the electronic maps from the old paper maps.

Mr. Chadwick stated the curb cut would be 12 ft. wide. He will show the concrete apron on a plan. They plan to lift the building and remove all interior finishes. He described the proposed demolition. They intend to lift the building in one piece. The front porch is rotted and they anticipate it will fall off or have to be removed. If this occurs they will reconstruct the porch.

The meeting was open to the public.

Julius Korschak, Esquire, was present to represent the neighbor to the south. His clients have no objection to the application and are in support of the application. The proposed house will be compatible with the neighborhood.

Hearing no further response the meeting returned to the Board for findings of fact.

MR. UNSWORTH – Dorothy Oslin of Deptford, New Jersey is the owner of the subject property. She is requesting multiple variances since the property is now located in the Conservation zoning district. The change from the Resort Residential zone to the Conservation zone was an error. If this were still an RR zone the only variance needed would be for lot coverage. The lot coverage proposed is 32.4% where 27% is permitted. The applicant has owned the property for 31 years. Mr. Oslin is disabled and the renovations are to make the property more accessible. The house is being raised to meet flood elevation. The habitable floor area will not increase. The deck on the rear of the property is creating a need for a variance. The adjacent neighbor is in favor of the

application. The renovations will improve the aesthetics of the structure. The driveway apron will be 12 ft. He is in favor of the application.

MR. PIERSON – An elevator will be located in the garage that will go to the first floor. The interior of the home will be renovated to meet current codes. The applicant anticipates the front porch may fall off during the lifting of the building since it is in such poor condition. The building will not exceed 28 ft.

MR. KLEPAC – The property has been changed to a Conservation zone.

MR. SHAWL – James Chadwick has testified the proposed renovations will be compatible to other structures in the area. He believes the variances can be granted without impairing the intent of the zone plan.

MS. PETROZZA – There was positive testimony within 200 ft. No one outside of 200 ft. testified.

MRS. BURGIN – Both the inside and outside of the building will be renovated. Utilities will be brought up to code. She believes that making the house handicap accessible conforms to special reasons b and e. The house would conform to the size, shape and architecture of other homes in the area. She believes the variances can be granted without substantial detriment to the public good and without impairing the intent and purpose of the zoning plan.

MR. YAKOPCIC – Agrees.

MR. CASACCIO – Agrees. The applicant has agreed to a 12 ft. driveway apron.

A motion was made by Mr. Unsworth and seconded by Mr. Shawl, to grant the requested variances with the standard conditions. In favor: Burgin, Klepac, Phifier, Pierson, Shawl, Unsworth, Casaccio.

RESOLUTIONS

The Board adopted the following resolutions.

1. ROBERT & ELLEN BARKER – BLOCK 856, LOTS 5 & 6 – BA08-09
2. STEWART & MARION SEGIN – BLOCK 324, LOTS 25 THRU 30 – BA25-08
3. JANET AY – BLOCK 600, LOT 19 – BA14-09
4. JOSEPH BOLAND – BLOCK 791, LOT 17 – BA09-09
5. DIMITRI GEORGOPOULOS – BLOCK 348, LOT 73 – BA13-09

BILLS

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

ADJOURNMENT

A motion to adjourn the meeting was made by Mr. Klepac, seconded by Mrs. Burgin, and approved. The meeting was adjourned at 9:55 p.m.

Submitted by,

Shelley Lea