

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
JUNE 1, 2009

The special 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: Ted Klepac, Chris Phifer, Jeff Pierson, Andrew Shawl, Matt Unsworth, Ken Yakopcic and Chairman Paul Casaccio.

Absent: Mary Jean Burgin and Lynn Petrozza.

Also in attendance were Dean Marcolongo, Board Solicitor; Charles Kona for Paul Dietrich, Board Engineer; Janet McCrosson for Shelley Lea, Board Secretary.

Chairman Casaccio thanked the Board members for their attendance at this special meeting and reminded them that the regular meeting is scheduled for June 11th.

APPROVAL OF THE MAY 14, 2009 MEETING MINUTES

A motion to approve the minutes was made by Mr. Shawl, seconded by Mr. Phifer, and approved.

SWEAR IN BOARD PROFESSIONALS

APPLICATIONS

1. Stewart and Marion Segin – Block 324, Lots 25 through 30

This is a continuation from the May meeting. Mr. Marcolongo questioned the use of the word continuation since the same Board members were not present. Mr. Unsworth was not present but has listened to the tape and is allowed to participate.

The Board had requested additional information due to the location of wetlands on the surrounding lands. Mr. Segin provided the required information.

The applicant is requesting a use variance, and 3 C variances, a front yard, rear yard and side yard setback.

Mr. Segin provided a copy of a site plan showing a concrete pad in the far Northeast corner that he would like to locate the tower on, right against the property line, further from the house. He provided a copy to each of the Board members of an aerial view of his property from the Cape May County website, as well as a wetlands map

showing no future building area in his immediate vicinity. Mr. Marcolongo marked each of these as Exhibit A-1 for the aerial view from the Cape May County website showing the tax map Block and Lots, and Exhibit A-2, showing the wetlands area around the property.

New York Avenue is a paper street behind Mr. Segin's property. He owns 100' from New Jersey Avenue back toward New York Avenue, and he is trying to purchase 2 lots behind his house, privately owned. A pool and a trampoline show in the back yard, with the trampoline being on Township property. Mr. Segin did not investigate the existence of endangered species on his property.

Mr. Segin provided information from the manufacturer of the tower for information on the stability of the tower, and he also got in touch with the engineer of the windmill company for wind information. He was told the tower and windmill will withstand 120 mph wind gusts, while only being required to withstand 80 mph winds. He is requesting a 100' tower, and with the blade in the vertical position the height reaches 113.5'. Mr. Klepac asked how close the nearest house would be to the 113.5' tower. If located in the new spot, the nearest house would be approximately 170' away. This company providing the information is one of those recommended on the New Jersey website for wind energy.

Mr. Unsworth asked Mr. Kona if he knew the wind zone Mr. Segin's house was located in. Mr. Kona felt it would not exceed 120 mph. The property is more than the height of the tower, and the property is locked by wetlands. He felt if it did fall it would not hit a neighbor's property.

By locating on the concrete pad, it creates a greater distance from any neighboring house.

Mr. Yakopcic asked what the distance was from the corner of the pad to Mr. Segin's house. Approximately 40' to 50'. Mr. Unsworth asked what setbacks he was requesting. Mr. Segin would accept whatever the Board is comfortable with.

Mr. Casaccio asked if Mr. Segin made any attempt to purchase the Township lots behind his house. Mr. Segin said he did try, but the Township wanted too much for them. That's why he is trying to privately purchase the lots directly behind him.

Mr. Kona said it made sense to locate the tower in the far corner that Mr. Segin is suggesting. If it fell from right to left, the closest house would be far enough away to avoid being hit. If it fell forward, the top end might be within the street, and if it fell to the right, there is nothing there now or to the rear. From Mr. Kona's standpoint, it should be far enough off of the property line to be able to service the equipment. He is in the AR Zone, where an accessory building must have a 25' setback. When asked if there would be a shed or other building to house auxiliary equipment, Mr. Segin said that the auxiliary equipment would be in his basement, and the power line would be underground. There will be 3 separate lightning systems, each a 4' post in the ground, copper coated. An engineer will do soil tests. If their assumption of the soil capacity is generous, the foundation may need to be larger to support and distribute the weight of the tower.

Mr. Marcolongo asked the Board what protections the Board felt were necessary in terms of conditions.

The size of the slab would be determined by the engineer. The Board should have protection that the tower does not end up on a neighbor's property. The foundation cannot be higher than 18" above grade, may be close to the property line, and the nearest leg of the tower must start no closer than 5' from the rear and side property line, and no further than 10' from the property line. Mr. Casaccio recommended fencing the tower according to the pool fence code. After some discussion, the members were polled and 4 of the 7 members agreed on a 4' height for a fence.

The meeting was open to the public. Hearing no comment, Mr. Marcolongo asked for Mr. Kona to summarize any instructions that should be built into the resolution.

Mr. Kona said the engineering plan needed to be sealed, and the soil must be tested. The 120 mph wind gust design is all right.

Mr. Marcolongo reiterated that the applicant is requesting a use variance to construct the windmill to a height of 113.5', requesting a rear yard setback of 5' and a side yard setback of 5', with the front yard setback change no longer necessary. Mr. Casaccio added the applicant needed to supply a deed of consolidation for the various lots involved.

Mr. Shawl asked Mr. Marcolongo if it was considered a use variance because a windmill is not currently allowed. There are several reasons. It is not currently an approved use in any zone, it can not be defined as an accessory, therefore it is necessary to have 2 principal uses on one lot, and because there is a principal structure that is more than 10% higher than allowed in that zone. This may eventually be defined as an accessory use, but until then, it must be defined as a principal use.

Mr. Casaccio asked Mr. Shawl to state his findings of fact.

Mr. Shawl stated the applicants have asked for a use variance to allow a windmill on their residential property. They need a use variance because there are two primary uses on the property, the height will be 10% higher than currently allowed and the windmill is not designated as an accessory use. They also require a rear yard setback and side yard setback. The location will be in the rear corner of the lot where an existing concrete pad will be removed. The foundation plan will be signed and sealed by an engineer prior to the construction of the tower. The applicant has agreed to have a 4' tall non-climbable fence, and to have one leg of the tower at least 5' from the property line, and to have a deed of consolidation drawn up. The applicant provided no testimony as to endangered species in the immediate area, he testified that houses are planned across the street so there will be additional residences in the neighborhood, he provided extra information on the tower structure to show the Board that it is designed appropriately for the wind zone. He provided testimony that he is in the process of purchasing two lots to the rear of his property, but did not include an agreement of sale in his application. In order to grant a Use Variance special conditions need to be met, and Mr. Shawl thinks the tower may cast a shadow in neighboring properties, which would impair the intent of the Zoning law.

Mr. Yakopcic, Mr. Phifer, Mr. Unsworth and Mr. Pierson concurred. Mr. Klepac added that the applicant provided aerial views of the property and was very cooperative with the Board's requests.

Mr. Casaccio stated there were no comments from the public inside or outside of 200', the windmill provides alternative energy, which is looked on favorably by the State of New Jersey,

and the contractor is on the State's list of approved contractors. He feels the creation of this energy resource creates the special reason to approve this request along with the reduction of green house emissions. Also the windmill has a higher efficiency rating than solar panels. Mr. Marcolongo suggests that the Board require the applicant to submit revised site plans, sealed engineer's plans, fencing details and a deed of consolidation. Mr. Casaccio suggested the applicant wait for the deed of consolidation until the purchase of the lots behind him are finalized. If the sale is not finalized within the next 60 days, he is to consolidate the current lots anyway.

Mr. Casaccio asked for a motion on the application as revised, for the use variance and the variance for a side yard and rear yard setback, and the conditions as set forth on the record. Mr. Pierson motioned, Mr. Klepac seconded.

Mr. Klepac, Mr. Pierson, Mr. Unsworth, Mr. Yakopcic and Mr. Casaccio voted in favor, with Mr. Phifer and Mr. Shawl opposed.

2. Robert and Ellen Barker of Block 856, Lots 5 & 6, 3600 Centerville Road, Greenville, Delaware were sworn in.

The Barker's lot sits on the corner of Commonwealth and Seacliff Avenues in Strathmere and has 3 front yards. Their current property has 4 units, two of which are rentals and two that the applicants live in. They want to construct a deck on the second floor accessible only to the second floor unit. There would be no electric, plumbing or heating required. They are requesting a use variance for the expansion of a non-conforming use and a front yard setback variance. After reading a brief summary of his request, Mr. Barker was asked questions by the Board members.

Mr. Phifer asked if Mr. Barker was going to tear down an existing porch with a roof and build a deck on the second floor, which will be only used by them. Yes, they have consolidated the two upstairs units for their own use.

Mr. Shawl asked what is under the deck. A small screened porch currently exists which will be replaced. It will be the same area as the second floor deck. The second floor deck will be open, with a railing.

Mr. Unsworth asked for the zoning schedule that shows the lot coverage. Mr. Kona did not calculate the lot coverage but relied on the condominium survey attached. He asked

who prepared the hand drawing. Mr. Barker sketched that, and gave a copy to the Board members. Mr. Kona suggested the Board members ignore that sketch since the dimensions are not consistent with the survey. The survey has been copied too many times and the dimensions are no longer accurate. He can say that the proposed addition on the side of the building shows the setback on Seacliff Avenue is 20', which complies with the ordinance at 15'. The dimensions shown as 25' are closer to 30'. There are 3 front yard setbacks, and one side yard. The addition would comply with the setbacks as well as the distance between it and the garage. He has not looked at the building coverages. The Zoning schedule allows 27% building coverage, which this project is still well within the allowance.

Mr. Unsworth asked if the septic would be impacted. It would not because they are proposing to reduce the total number of units from 4 to 3.

Mr. Kona said there is a two-story garage with a loft. He asked that it be noted the loft is not living space, only storage. The other comments he had were that since this is a multi-family unit the ordinance requires either a site plan review or a site plan waiver. In order to process this the Board needs to take action one way or the other. Mr. Casaccio felt a waiver would be the appropriate direction to take. The Barkers agreed to this. Mr. Kona commented about the lack of on-site parking for this property. The garage holds 1 car, and the pad has room for 1 small car. The tenants must park on the street. They were asked if they could fit 2 cars on the side of the house toward Commonwealth Avenue. A gazebo takes up that space.

Mr. Casaccio explained the Barkers must supply an as-built survey when they have completed the project. Mr. Kona suggested that if waiving the site plan, they should have a certified plot plan before they begin due to the number of inconsistencies on their drawings. This way everything is clear to begin with.

Mr. Casaccio opened the floor to questions from the public within 200' of the Barker's property. Hearing none, he opened the floor to the public further than 200' from the Barker's property. Again hearing none, he closed the public portion.

Mr. Unsworth stated his findings of fact. This request is for an expansion of a non-conforming use to add a deck to a second floor with a porch below, within the required setbacks. It will increase the footprint of the property. The conditions on the applications will be that the garage loft not be used for living space, applicant will agree to a site plan waiver, but will submit a certified plot plan prior to beginning. The number of units will be reduced from 4 to 3. There is concern about parking other than in the garage. There should be more room since the density is decreasing. There were no public comments.

Mr. Pierson and Mr. Klepac concurred with Mr. Unsworth's findings.

Mr. Shawl noted that the applicant provided pictures of the neighborhood to show similarities, and will provide a certified survey prior to construction and are requesting a site plan waiver.

Mr. Yakopcic and Mr. Phifer concurred.

Mr. Casaccio asked for any comment from people within the 200' radius, and then from outside the 200' radius. Hearing none he closed the public comment period. He noted that the consolidation of the 2 units would help alleviate some of the parking problems in that area.

Mr. Klepac made the motion to approve the use variance and site plan waiver with the conditions set forth on the record. Mr. Unsworth seconded the motion.

All members present voted in favor of the motion.

3. Joseph Boland of 114 Decatur Avenue, Somers Point, NJ was sworn in. He was represented by attorney Jeffrey April, and Lou Donofrio of Gibson Associates.

The applicant is asking for variances for lot area, lot width, front and side yard setbacks, building coverage and building height, to raise the structure to flood elevation and to replace the pilings at 2300 Commonwealth Avenue in Strathmere, Block 791, Lot 17.

Mr. Donofrio presented 2 sheets of revised variance plans and a plot plan with general notes last revised 3/19/09, marked as Exhibit A-1.

Mr. April questioned Mr. Donofrio as to the existing lot's location and size. It is 30' wide and 95' deep, 2,850 square feet, the lot on the North side is vacant and owned by NJDEP, the lot in the rear is vacant and also owned by NJDEP and to the South is a single-family dwelling. To the East is Commonwealth Avenue. The applicant wants to raise the house vertically to comply with the FEMA flood requirements. The property already has 6 bulk variances. They are not seeking to change any of the pre-existing variances. By raising the structure they can upgrade the foundation and pilings. The structure pre-dates the 1962 storm. They will also be able to park 2 cars underneath. Raising the house will create a non-use height variance. It is currently 28.2', with 33' allowed. They are seeking a height variance for 1.5', asking to go to 34.5'.

Mr. Shawl interrupted to ask a clarification of the height and elevation. The height is from the crown of the road.

The existing height is 28.2'. Since there is no parking underneath, the current limit is 28'. By raising the structure and allowing parking underneath, it will cause a reduction in on-street parking. This will create the need for a parking space width variance. Currently 9' wide is required for the first car. Applicant is seeking 8.5' due to the framing and piling configuration of the project.

Mr. April asked if Mr. Donofrio could cite the criteria for a C-1 variance. The lot is exceptionally narrow at 30' wide. The parking space variance could also be considered for a C-2 variance. It enhances the zoning intent by creating parking on-site, and getting cars off-site. The granting of these variances would not have any negative effect on the community. Raising the structure would not impair anyone's sight or airflow.

Mr. Unsworth asked about the increased parking. The 8.5' would be between the pilings only, wider where there are no pilings. There is currently no parking available on site.

Mr. Klepac asked if we would be losing parking spaces on the street by creating the under house parking. Mr. Casaccio stated the current maximum width for the apron is 12'. That would not work for 2 spots under the house.

Mr. Marcolongo asked if the Township would require curbing where there is currently none. It is a County road, the Township has no jurisdiction.

Mr. April said they would seek a 30' variance for the driveway.

Mr. Casaccio stated that most of Strathmere is getting curbs and sidewalks, but not yet in this area. Mr. Marcolongo stated that a condition could be made to require curbs and sidewalks in the future.

Mr. Unsworth asked if the parking area would be enclosed and can cars doors be opened in the parking area. The original plans showed the piling configuration, and it should accommodate most passenger vehicles. They could squeeze four vehicles if necessary.

Mr. Shawl asked if there were stairs on the back deck. On the variance plan there were stairs on both sides of the building with a front entry porch. The stairs will be eliminated in raising the structure, but the footprint will become a balcony with access only from the inside. Entry to the house will be in the rear. The front yard setback will be 2.8' to the leading edge of the balcony. Utilities will be underneath the house in the center of the parking area, above base flood elevation.

Mr. Klepac asked about the side yard setback. From the structure to the property line is 2.3'.

Mr. Marcolongo noted that the Zoning schedule referred to 0.5' and 1.9'. Mr. Donofrio stated the 0.5' referred to the deck on the North and 1.9' referred to the existing 2nd floor deck overhang.

Mr. Pierson asked how high the house would be raised. It would be raised 6.5' making it 1.5' over current regulations.

Mr. Marcolongo suggested revising the zoning schedule to ask for a 34.5' height.

Mr. Kona asked how far to the rear could spaces be moved to allow 2 more parking spaces underneath. Mr. Donofrio agreed to push the spaces to allow 4 cars.

Mr. Casaccio asked for public input from anyone within or outside the 200' perimeter.

Hearing none, the public portion was closed.

Mr. Shawl stated his findings of fact. The applicant is Joseph Boland of Somers Point asking for variances at 2300 Commonwealth Avenue in Strathmere, Block 791, Lot 17. He proposes to raise his house above the limitations by virtue of a height variance. He has prior pre-existing variances on this residence. It is a single-family two-story residence as it exists. By raising the house he is proposing 2 parking spaces underneath and 2 parking spaces partially underneath. He needs to request a variance for a larger driveway apron. His higher house will not cast a shadow on adjacent homes. The applicant provided pictures showing the improvements would be in keeping with the character of the neighborhood.

Mr. Yakopcic added that the applicant agreed to possible future curbing and sidewalks if the Township requires it.

Mr. Pierson stated the applicant asked for a parking width variance, which would increase the number of off-street parking spaces. The development will not conflict with the general welfare of any other municipality or the County.

Mr. Phifer, Mr. Klepac and Mr. Unsworth concurred with the others statements.

Mr. Casaccio called for a motion on the applicant's variance. Mr. Unsworth made the motion with Mr. Pierson seconding.

All members present were in agreement.

4. Dimitri Georgopolous was asking for a variance to allow an 8 square foot sign at 2051 Route 50 in Tuckahoe, also known as Block 348 Lot 73, where only 6 square feet is permitted. He presented the affidavit from the newspaper to the secretary. He was sworn in. Mr. Marcolongo stated the requirements for the sign he is requesting is not in the ordinance itself, but is found in the definitions for Home Occupations. The limitations are put forth in the definition.

Mr. Georgopolous stated this is his principal residence and he has an office in his home for his business as an electrical contractor. He is in the Tuckahoe Village Zone, which is residential. He thought he was allowed to put a sign on his property.

Mr. Casaccio asked if there were any deliveries to his home and how many commercial vehicles he parks there. He has no deliveries made to his home, and has one commercial truck and his personal SUV park there. Mr. Casaccio explained that he could only have one commercial vehicle, no deliveries and no employees at his home.

Mr. Georgopolous bought the property under the impression it was commercial and residential and he could operate his business from there.

He is allowed a six square foot sign and has an eight square foot sign. Since the property is primarily a residential use he can only use 450 square feet of his residence toward the purpose of his business. He cannot use the property for storage of his business. There are no lights on the sign.

Mr. Casaccio asked if there was any public inside or outside the 200 foot perimeter to comment. Hearing none, he closed the public portion.

Mr. Unsworth began the findings of fact. He doesn't think the applicant should have had to appear before the Zoning Board. The sign could have been replace and relocated without the

granting of a variance for such a small change. Mr. Unsworth asked if a temporary variance could be granted for a short term. Mr. Marcolongo felt the Board could issue a temporary variance, but Mr. Georgopolous would have to comply with the regulations by the end of the short term allowed.

Mr. Georgopolous stated a neighboring business, B & D Construction, has a similar sign. Mr. Casaccio answered that would be looked into.

Mr. Pierson stated his findings of fact. Mr. Georgopolous has come before the Board asking to allow a 2' x 4' sign instead of the 2' x 3' sign currently allowed in the Tuckahoe Village Zone. It was discussed what was allowed for a home occupation. It was suggested he receive a six-month temporary variance to allow him to correct the sign size. There was no public comment.

Mr. Klepac noted that only one commercial vehicle was allowed to be parked on site.

Mr. Shawl stated the property was located in the Tuckahoe Village Zone, home occupations are permitted and other businesses have signs.

Mr. Yakopcic had nothing to add.

Mr. Phifer noted that only 450 square feet was allowed for an office in the home.

Mr. Marcolongo added that only one employee, not a resident of the building, was allowed on site. The sign must be 10' from the property line, not the street.

Mr. Casaccio asked for a motion on the application to relocate the sign and make it conform to the proper size regulation. Mr. Pierson made that motion, Mr. Unsworth seconded.

All members present were in agreement.

5. Janet Ay of 205 Stagecoach Road, Marmora, also known as Block 600 Lot 19, was requesting a variance for expansion of a non-conforming use to construct an addition to a single family dwelling. She was sworn in.

She explained she wanted to make an existing greenhouse into a dining room, add a bedroom extension and a half bath upstairs.

No questions were asked by the Board.

Mr. Marcolongo stated there were two existing non-conforming conditions that will not be exacerbated by this request, lot frontage and lot width.

Mr. Casaccio asked for comments from the public within or outside the 200-foot perimeter of the property in question. Hearing none, he closed the public portion of the meeting.

Mr. Unsworth stated the findings of fact. The owner of Block 600 Lot 19 wants to convert and expand existing living space. She has 2 existing non-conforming conditions that do not affect her application. Mr. Shawl added that the house pre-dates the most recent zoning change. Mr. Klepac and Mr. Phifer concurred with the other comments.

Mr. Casaccio asked for a motion to approve the application. Mr. Klepac offered the motion, Mr. Phifer seconded.

All members present approved.

Mr. Marcolongo was asked about the disposition of the issue of Ralph's Bagels. Mr. Dietrich has not reported to him. He is scheduled to appear again in July.

Mr. Casaccio stated that there are 6 applications for the July 11th meeting.

Mr. Marcolongo reported that the Appellate Division sustained the Planning Board's decision for Tom Tower, but remanded it back on the issue of findings of fact regarding the width and height of the berm. The Planning Board will hear it again.

Mr. Casaccio stated there has been no appeal from Twisties as yet. The time runs until June 26th. There is still a question of a shed on the property.

Mr. Klepac wanted to congratulate Janet McCrosson for her appointment to the Planning Board, replacing Dwayne Terwilliger.

BILLS

A motion to pay the submitted bills was made by Mr. Pierson, seconded by Mr. Unsworth and approved.

ADJOURNMENT

Mr. Unsworth offered a motion to adjourn, seconded by Mr. Shawl.

Submitted by,

Janet McCrosson