

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
RE-ORGANIZATION MEETING MINUTES
JANUARY 14, 2010**

The annual Re-Organization 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.

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

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

Absent: Kenneth Yakopcić

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

RE-ORGANIZATION

A motion was made by Mrs. Burgin and seconded by Mr. Pierson, to nominate Paul Casaccio as Chair. The nominations were closed. In favor: Burgin, Klepac, Phifer, Pierson, Shawl, Unsworth, Petrozza.

PAUL CASACCIO ELECTED CHAIRMAN FOR 2010

A motion was made by Mr. Pierson and seconded by Mr. Shawl, to nominate Matthew Unsworth as Vice Chair. The nominations were closed. In favor: Burgin, Klepac, Phifer, Pierson, Shawl, Petrozza, Casaccio.

MATTHEW UNSWORTH ELECTED VICE CHAIR FOR 2010

A motion was made by Mr. Klepac and seconded by Mrs. Burgin, to nominate Dean Marcolongo as Board Solicitor. The nominations were closed. In favor: Burgin, Klepac, Phifer, Pierson, Shawl, Petrozza, Unsworth, Casaccio.

DEAN MARCOLONGO ELECTED BOARD SOLICITOR FOR 2010

A motion was made by Mr. Unsworth and seconded by Mr. Pierson, to nominate Paul Dietrich as Board Engineer. The nominations were closed. In favor: Burgin, Klepac, Phifer, Pierson, Shawl, Petrozza, Unsworth, Casaccio.

PAUL DIETRICH ELECTED BOARD ENGINEER FOR 2010

A motion was made by Mrs. Burgin and seconded by Ms. Petrozza, to nominate Shelley Lea as Board Secretary. The nominations were closed. In favor: Burgin, Klepac, Phifer, Pierson, Shawl, Unsworth, Petrozza, Casaccio.

SHELLEY LEA ELECTED BOARD SECRETARY FOR 2010

OFFICIAL NEWSPAPERS FOR 2010

A motion was made by Mrs. Burgin and seconded by Mr. Unsworth to utilize the Press, Sunday Press and Sentinel Ledger as the official newspaper.

SWEAR IN BOARD PROFESSIONALS

APPLICATIONS

1. MARILYN ROLAND – BLOCK 855, LOTS 2 & 2.01 – BA39-09

Applicant is requesting a one-year extension of a previously approved use variance to raise an existing boathouse at 204 N. Bayview Drive, Strathmere.

Marilyn Roland and Robert Roland, 18 Seacliff Avenue, Strathmere, were sworn.

Mr. Roland testified that the Board granted a use variance on February 7, 2008 to raise an existing deck and pier. Resolution BA02-08 was memorialized on March 13, 2008.

Solicitor Marcolongo stated that the Permit Extension Act does not protect the application since the property is environmentally sensitive. The one-year extension would expire March 13, 2011.

Mr. Roland stated that he received 2 bids for raising the deck that they felt were unreasonably high. He would like additional time to find a contractor or an alternative solution. There have been no changes to the site or the surrounding area since the variance was granted.

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

MR. SHAWL – Marilyn Roland is the owner of 204 North Bayview Drive in Strathmere, known as Block 855, Lots 2 & 2.01. The memorializing resolution was signed on March 13, 2008. The applicant is asking for a one-year extension of approval to find a suitable contractor or an alternative plan for raising the deck. There was no public comment.

MS. PETROZZA – She concurs.

MRS. BURGIN – The zoning board has the ability to grant three one-year extensions. This is the applicant's first extension request. The extension would expire March 13, 2011.

MR. PHIFER – He concurs.

MR. UNSWORTH – He concurs.

MR. PIERSON – There have been no changes to the property.

MR. KLEPAC – The applicants represented themselves.

MR. CASACCIO – He concurs.

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

2. JUSTINE KABBOKO – BLOCK 732, LOTS 4 & 5.01 – BA31-09

Application is for a use variance to construct a single-family dwelling in the TCC zoning district and several bulk variances at 17 Norwood Road, Marmora.

Justine Kabboko and Mark Kabboko, 17 Norwood Road, Marmora, were sworn. Justine Kabboko, owner of the property, requested that her Father discuss the merits of the application.

Mark Kabboko testified that on April 2, 2009 the zoning board granted variances to renovate and expand an existing single-family dwelling. It was later discovered that the termite damage to the structure would make it impossible to support a second floor. The house was completely torn down. Variances are now being requested for lot area, lot frontage, lot width, lot depth, 2 side yard setbacks and front yard setback. Buy/sell letters were sent to the adjoining property owners and the responses indicated there was no interest in either buying the applicants property or selling their properties.

Mr. Kabboko testified that Gibson Associates prepared a Plan of Survey dated 11-04-09 and Plan of Proposed Sewage Disposal System dated 11-03-09. The location of the house was moved slightly to accommodate the new septic system. The proposed house is slightly larger and approximately 2 ft. closer to the road, however it is further from the side property line than it was previously. Although this is a commercially zoned area there are other homes in the area that are similar in size and setbacks. The septic is designed for a one-bedroom house. The house will look the same as in the architectural design provided to the Board for a 32 ft. x 24 ft. dwelling. The porch would be located on the south side of the property.

Solicitor Marcolongo stated that the existing shed in the rear of the property encroaches into the side and rear yard setbacks. Mr. Kabboko amended the application to include the setback variances for the shed.

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

MR. UNSWORTH - Justine Kabboko is the owner of property located at 17 Norwood Road in Marmora, also known as Block 732, Lots 4 and 5.01. The applicant is requesting

a use variance for a new single-family home in the TCC zone and several bulk variances as shown on the plan. The applicant previously received variance relief to reconstruct a non-conforming structure. The applicant found there was extensive termite damage after starting the project. The applicant demolished the structure since it could not be saved not realizing that a new septic would be required and additional relief would be needed from the Board. A septic design was prepared and a permit has been received. The house was moved closer to the road to accommodate the septic. The applicant has supplied plans of a 24 ft. x 32 ft cape cod style home with a porch on the front. The applicant has agreed to build a structure consistent with the plans submitted. The applicant has amended the application to include side and rear setback relief for the existing shed in the rear of the property. There is city water on the street. There was no public comment. The applicant has testified and presented plans to verify the structure will be an improvement to the neighborhood and will be more aesthetically pleasing than the structure that was there. On site parking will be provided.

MR. PIERSON – He believes the application is compatible with 40:55D-1(a) since the lot is narrow and oddly shaped that justifies setback relief.

MR. KLEPAC – He concurs.

MR. SHAWL – The applicant proposes to replace a home on the property. Granting the requested variances would not negatively affect the master plan or zoning ordinance and would have no detriment on the neighborhood. He believes the use variance could be granted since the new home would be aesthetically pleasing.

MS. PETROZZA – She concurs.

MRS. BURGIN – The proposed house would be similar to others in the neighborhood. She believes the new house would add to the neighborhood and be better than what was there.

MR. CASACCIO – Buy/sell letters were sent and there were no offers to buy or sell adjoining property.

A motion was made by Mr. Pierson and seconded by Mr. Shawl, to grant the use variance and multiple bulk variances requested and the additional variances for the shed, with the standard conditions and the condition that the house is constructed in accordance with the plans submitted to the Board for a 24 ft. x 32 ft. cape cod style home. In favor: Burgin, Klepac, Phifer, Pierson, Shawl, Unsworth, Casaccio.

3. GERARD & MARTHA BEEBE – BLOCK 473, LOT 1 – BA34-09

Application is for a rear yard setback variance for an in-ground swimming pool and setback variances for a shed at 3 Frances Drive South, Petersburg.

Gerard and Martha Beebe, 3 Frances Drive South, Petersburg, were sworn along with Tom Decker, 6 Olivia Drive, Egg Harbor Township.

Mrs. Beebe testified they are requesting a setback variance since the pool was accidentally placed to close to the rear property line

Mr. Decker, employee of Atlas Pools, testified the original survey from 1977 did not show the fence. There were no monuments or survey pins found on the property. Believing the fence was on the property line the setbacks were measured from the fence. When the As Built Survey was submitted it was determined by the zoning officer that the pool encroaches 20 inches into the rear setback. The pool is surrounded by a 6 ft high fence and heavy shrubbery.

Mr. Beebe testified the shed was on the property when they purchased it in 1977. In 1987 the shed was moved back to accommodate an addition to the house.

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

MR. UNSWORTH – The applicants Gerard and Martha Beebe are the owners of 3 Frances Drive South, Petersburg, also known as Block 473, Lot 1. The applicants are requesting a rear yard setback to a swimming pool and setbacks for an existing shed. When the applicant’s pool was installed it was inadvertently placed in the wrong location and later found the pool was 20 inches to close to the property line. The pool installer testified as to how the error occurred. The applicant testified the shed was moved during an addition to the home and has been there since 1987. It appears an honest mistake occurred during installation of the pool and he does not see any reason why the variance cannot be granted.

MR. PIERSON – He concurs.

MR. KLEPAC – The pool has no detrimental affect on the neighbors.

MR. SHAWL – There was no public comment.

MS. PETROZZA – She concurs.

MRS. BURGIN – She believes the variance can be granted without detriment to the public good and without impairing the intent of the zoning ordinance.

MR. PHIFER – Nothing to add.

MR. CASACCIO – The pool allows the applicants to enjoy the light, air and open space.

A motion was made by Mr. Unsworth and seconded by Mr. Pierson, to grant the setback variances for the pool and the shed with the standard conditions. In favor: Burgin, Klepac, Phifer, Pierson, Shawl, Unsworth, Casaccio.

4. ROBERT BREUNIG – BLOCK 548, LOT 6.01 – BA32-09

Application is for amended site plan approval and possible use variance to operate a natural gas compressor trailer and an interpretation to determine if natural gas fueling is a permitted use in the CM2 zoning district at 163 Route 50, Greenfield.

Chairman Casaccio and Mr. Unsworth both stepped down during this particular application. A motion was made by Mr. Shawl and seconded by Mrs. Burgin, to nominate Jeff Pierson as Chairman during this application.. The motion was approved.

John Scott Abbott, Esquire, represented the applicant.

Bill McManus, Professional Land Surveyor and Planner, Norman Dotti, Acoustic Engineer and John Halk, former employee of South Jersey Gas retiring in 2005 and current part-time employee of Earthtech, were sworn. Robert Breunig, 20 Tyler Road, Greenfield, was sworn.

Mr. Abbott stated the applicant is switching from diesel run trucks to natural gas run trucks.

Mr. McManus was present to discuss a site plan prepared by Duffy Dolcy McManus & Roesch, dated 9-1-09 and revised 12-1-09. He testified that Mr. Breunig received his original approval in 1999. He stated that the natural gas compressor is located on the northerly side of the property approximately 13 ft. from the property line. It is his opinion that a use variance is not needed. In 2003 Mr. Breunig received approvals for a repair garage. Since that time the zoning ordinance has changed to allow repair garages. He believes the repair shop is a permitted use and the compressor is an accessory to that use. He referred to the uses permitted in the CM2 zoning district shown on Schedule B of the ordinance. He also referred to Section 20-6.4, Conditional Uses, in regards to auto services. He feels this is an existing permitted use and would not require a use variance if it were before the Planning Board. He believes the property is ideally suited for this particular use. He stated that diesel fuel is dispensed at the applicants other site across the street but not at this site.

Mr. Dietrich stated that the Zoning Board is maintaining jurisdiction of the site since they granted the original approval. He believes that fueling stations are accessory to service stations. The applicant is not performing services to the public only on his own fleet, similar to a private service station. If the compressor is considered a permitted use or an accessory there would need to be standards established.

Mr. Halk testified that natural gas is sort of new to New Jersey in terms of compressed natural gas. Vehicles have run on natural gas for about 25 years now. The trucks Mr. Breunig has are 10 years old and were purchased from Wisconsin. He stated that natural gas is lighter than air and dissipates so that it is not near as dangerous as diesel fuel. Not utilizing diesel reduces the amount of carbon dioxide in the air. He described the 4 stages of the compressor. He also explained PSI levels. There are 3 tanks that are located under the compressor. The compressor needs to be vented since it is powered by natural gas rather than an electric motor.

Mr. Abbott stated that the ordinance is clear that service stations and repair shops are allowed in this zone and the compressor is accessory. He believes the compressor is customarily incidental to a repair shop and therefore should not require a variance.

Mr. Breunig testified he has been filling the trucks using the compressor since February 2009.

Mr. McManus testified that he believes the property is ideally suited for this particular use.

Norman Dotti, P.E., of Russell Acoustics, LLC, testified that he has worked as an acoustical engineer since 1971. He explained how readings are taken at the property line. On October 8, 2009 he visited the site in order to take sound measurements. The equipment was calibrated as required and the wind speed measured. He took measurements at 3 locations. He found the sound level to be in the upper 50's even with the ambient noise. This measurement is well under the State daytime level permitted which is 65.

Mr. Dotti testified the compressor has 3 sides made of metal, plastic foam and cotton batting. There is a roof over it and at the end there is a hatch that must be removed during hot temperatures because of the radiator. The compressor is about 2 dba's noisier with the hatch open. Even with the hatch off it is under the limit. One sheet of paper with 4 photographs of the compressor was marked as Exhibit A-1. A report prepared by Mr. Dotti and sent to Bill McManus, dated October 20, 2009 that includes an aerial of the property and 4 graphs was marked as Exhibit A-2. He reviewed the graphs and stated that the vehicles on Route 50 make more noise than the compressor. He testified that the trees on the property line make no difference in the noise since you need about 300 ft. of dense growth for a 5-decibel reduction.

When asked by Mr. Dietrich, Mr. Dotti testified that he didn't take a measurement at lot 7.02 north of the compressor that is a residentially zoned property with a residential use adjacent to the applicant's property.

Mr. Halk testified that the switch is shut off at 7 p.m. and does not kick back on during the evening. It is only on automatic mode during the day.

The meeting was open to the public.

Hance Jaquette, Esquire, represented Julie Frasca, owner of 24 Tyler Road. Mr. Jaquette stated that Ms. Frasca is the owner of Lot 7.01. They have retained a noise expert of their own that has taken readings to show that at different locations the compressor makes noise in excess of the State standards. Testimony will be given that the compressor runs outside of the approved hours of operation. He urged the Board to require the applicant to obtain a use variance. He stated that the fueling of vehicles is not included in the ordinance as a principal or accessory use. He feels the Board should not treat this as an interpretation since the Board would lose control of future applications and set a precedent. He stated that service stations as described in the ordinance include selling of fuel and clearly fuel is not being sold at this location. He believes that Township Committee should set the standards for this type of fueling.

Victor Klever, Wildwood, New Jersey, was sworn. He asked why the compressor was not located across Route 50 with his other fueling station. He also asked why the applicant did not come before the Board prior to installing the compressor.

Ray Leps, 1150 Route 50, Petersburg, was sworn. He doesn't understand why the applicant would not try to quite the machine and be a good neighbor rather than having to hire experts to represent him.

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

MR. SHAWL – Robert Breunig is the owner of 163 Route 50 in Greenfield. He is asking the Board to interpret whether a natural gas compressor is a permitted use or implied accessory use. Several experts have given testimony in regards the operation of the compressor. Since the applicant received approvals the ordinance has changed to allow repair garages. The applicant operates a repair facility at this site and fuels his trucks with diesel across the street or natural gas from the compressor at this location. The compressor is only used during approved hours of operation. It was explained to the Board how the pressure is increased. Testimony was given that when the compressor is running it is well below the State noise standards. The current hours of operation are 7 a.m. until 7 p.m. The public has made argument that the compressor should be treated as a use variance.

MR. PHIFER – He concurs. It is his opinion that natural gas fueling was not an implied use by the previous code. There are way to many variables that need to be defined to establish the proper guidelines. He does not feel the Board has enough information to do this.

MRS. BURGIN – There are other facilities in the Township that fuel their own equipment. The site is located in the CM2 zoning district, which is the most intense commercial zone in the Township. She feels that guidelines are needed for this type use.

MS. PETROZZA – She feels this is the best location for the compressor since it is the most intense commercial zone. Mr. Breunig has been filling his trucks across the street. She feels natural gas fueling is good for the environment. She feels this should be a permitted use but with guidelines.

MR. KLEPAC – It is his opinion this is an implied accessory use.

MR. PIERSON – He feels this is an implied accessory use. In the last few years there has been pressure by the federal government and other agencies to go green. We need to look at our planet and environment and this is one mechanism to make us go green.

Approvals were granted previously to operate a repair garage at this site. This is being considered as a service station even though the definition includes selling to the public. He feels the definition of service station needs to be looked at. The applicant does not intend to sell to the public and will keep the fueling private and support his use only. He believes the ordinance allows flexible standards to be established and that this would not set a precedent. The ordinance also left out diesel and addresses gasoline only. Electric cars were also left out along with propane and numerous other types of vehicles that should be addressed.

A motion was made by Mr. Klepac and seconded by Mrs. Burgin to interpret that this specific facility with the natural gas fueling is a permitted implied accessory use under the statute. In favor: Burgin, Phifer, Petrozza, Pierson. Opposed: Phifer, Shawl.

Solicitor Marcolongo announced that a use variance portion of the application is not necessary and the Board will move onto the site plan and variances requested. The next meeting will be February 11th. No further notice of this application is required.

BILLS

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

RESOLUTION

1. MEETING DATES 2010 – RESOLUTION 01-2010

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

2. ROBERT COMFORT – BLOCK 754, LOT 1 – BA24-09

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

3. R C CAPE HOLDINGS, BLOCK 479, LOTS 74,76,94.01,97,98,99 – BA29-09

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

4. CURTIS CORSON – BLOCK 559, LOT 23 – BA30-09

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

5. FREDERICK & DAWN SNEATHEN – BLOCK 382, LOT 11 – BA35-09

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

6. CONTRACT FOR DEAN MARCOLONGO, BOARD SOLICITOR

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

ANNOUNCEMENTS

Chairman Solicitor announced that the Annual Report would be included on the February 11th agenda.

ADJOURNMENT

A motion to adjourn the meeting was made by Ms. Petrozza, seconded by Mr. Phifer, and approved. The motion was adjourned at 10:48 p.m.

Submitted by,

Shelley Lea