

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
MARCH 11, 2004

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. The Chairman advised of the meetings compliance with the Open Public Meeting Notice. Everyone saluted the flag.

A. ROLL CALL: Roll call was taken with the following members present:

Stephen Ay	Frank Conrad
Marshall Behr	Ted Klepac
Elizabeth Bergus	Jeffrey Pierson
Mary Jean Burgin	Matthew Unsworth
	Paul Casaccio

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

B. APPROVAL OF THE FEBRUARY 11, 2004 MEETING MINUTES:

A motion to adopt the minutes was made by Mrs. Bergus, seconded by Mr. Pierson, and approved. Those in favor: Behr, Bergus, Burgin, Conrad, Klepac, Pierson, Unsworth, Casaccio.

C. TABLED APPLICATIONS:

1. KRUEGER, PAUL & LYDIA – BLOCK 841, LOTS 12 & 12.01:

Julius Korschak, Esquire, represented the applicants. He requested to table the application until April 8, 2004. Notices will be mailed and published in the paper.

D. APPLICATIONS:

1. THOMAS TOWER / ACTION SUPPLY, INC. – BLOCK 565.03, LOT 54 – BA 29-04:

Application is for a use variance to permit a supplemental portable concrete mixing plant to be used on site, preliminary and final site plan approval and amendment to their previously approved site plan at 1413 Stagecoach Road, Seaville.

Julius Korschak, Esquire, represented the applicant. The property is located in the Mining zone. There are a variety of uses conducted on this site, including a soil extraction area, ready mix concrete plant, office buildings and display areas. Recycling of concrete

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has been done on the property since the 1950's. The board previously ruled that this was a pre-existing non-conforming use and could continue. They are seeking approval for a second portable concrete plant currently in use on the property. They have received a citation from the township indicating that a variance and/or site plan approval is needed.

Thomas Tower, 121 Harbor Road, Beesleys Point, was sworn in. He is the owner of the property and Action Supply since 1984. They utilize the sand from the mining operation to make ready mix concrete. He has operated a concrete plant on this site since 1984. He utilized the original portable plant from 1984 until 1999 when he purchased the new plant. A brochure showing the plant was marked as Exhibit A-1. The plant is portable and can be towed with a tractor. The portable plant is smaller and has a smaller capacity than the permanent plant on site. A photograph showing the permanent plant was marked as Exhibit A-2. The portable plant is used as a backup to the main plant. They set up the portable plant last spring when they had maintenance scheduled for the main plant so they could continue to serve their customers. Utilizing this plant in conjunction with the main plant smoothes out the daily operation. There is no longer a line of trucks waiting to be loaded. This also shortens the workday and helps in customer deliveries. They have not added any trucks specifically for this plant. There are several types of trucks that enter the site. There are dump trucks that pick up and deliver recycling material. There are also dump trucks associated with the mining operation. The plant has its own air compressor and a portable generator. It is not hooked up to any permanent utilities. The capacity of the main plant is 1,000 yards an hour and the portable plant is 300 yards per hour. They utilize the same stockpiles for both plants. Their normal hours of operation are 6 a.m. until 6 p.m. He explained the way the truck routes are split so the trucks utilize different roads and leave the site in different directions.

David Schropshire, Traffic Engineer, was sworn in. He testified that traffic counts are actually data for a typical operating day. Actual traffic counts were done at the site accesses and along Stagecoach Road in October 2003 to give them an idea of the existing traffic conditions. He reviewed the traffic counts that were taken including truck traffic. The operation as it exists today has no capacity restraints on the roadway. He believes the counts are nowhere near what the maximum could be. He believes that the portable plant smoothes out the operation.

Mr. Dietrich stated that a site plan approval or a variance to operate the portable plant since it is an expansion of a non-conforming use.

Vincent Orlando, PE, was sworn in. He described the location of the portable plant on the site. The unit is portable but does have permanent facilities around it. The application as proposed does not substantially impair the intent of the zone plan or ordinance. There is no detriment to the public good. The site is in the Mining zone and the uses are compatible. There are no environmental issues that he is aware of.

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

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MR. BEHR- Thomas Tower is the owner of Action Supply, Inc. located at 1413 Stagecoach Road, Seaville. The property is also known as Block 565.03, Lot 54. This is a mining site that also produces concrete. A permanent plant has been on site since 1984. A portable plant was brought to the site to be used as a supplemental plant when the main plant was down. The original portable plant was replaced in 1999 with a new portable plant. One loader is used to service both plants. The portable plant helps things get done sooner. The hours of operation are 6 a.m. until 6 p.m. The portable plant utilizes a generator that puts out a low percentage of noise due to muffling and insulation. The concrete and sand is on site. The area and low interest rates have produced a considerable amount of construction in recent years and the demand for concrete. The first site plan showing a concrete plant was dated 1975. The location of the portable concrete plant was not in any prior site plans. The portable plant can be moved off site, however it would be returned to the site. He accepts Mr. Orlando's testimony as a finding of fact.

MRS. BURGIN – The traffic leaving the plant enters Stagecoach Road and 50% goes north and 50% goes south. The trucks utilize Routes 9 and Route 50 and also Hope Corson Road and Butter Road. A portable concrete mixer has been used on site since 1984. She believes the special reasons have been met in accordance with NJS 40:55D-2. She believes the applicant has met the negative criteria that it will not substantially impair the intent and purpose of the zone plan and ordinance and that it can be approved without creating detriment to the public good. There was no public testimony.

MR. UNSWORTH – The applicant's professionals have testified there are no environmental impact or issues by the use of the portable plant.

MR. PIERSON – This was previously an uncommon use.

MR. KLEPAC – The applicant takes the neighbors complaints very seriously. The applicant distributes the truck traffic so that it is not concentrated in any particular area at one time.

MR. CASACCIO – The permanent plant can produce up to 1,000 yards per hour and the portable plant can produce approximately 300 yards per hour. The maximum capacity from both plants is only 20 loads per hour. The applicant agrees to adjust his hours of operation if there are any complaints from neighbors in regards to noise. The applicant does not have the need to start early or work later since the portable plant is taking pressure off the main plant. The portable plants also works as a backup if the main plant breaks down. The plant is located in an area that limits the effect on the neighbors. The mining operation sits in the middle of a residential neighborhood.

A motion was made by Mr. Klepac and seconded by Mr. Pierson, to grant the use variance and preliminary and final site plan approval, with the standard conditions. Those in favor: Behr, Bergus, Burgin, Conrad, Klepac, Pierson, Unsworth, Casaccio.

2. CILIBERTO, TRICIA – BLOCK 479, LOTS 55 & 56 – BA 03-04:

Application is for a use variance to allow the existing dwelling to remain during the construction of a new single-family dwelling at 15 Willets Road, Marmora.

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Tricia and Craig Ciliberto, 15 Willets Road, Marmora, were sworn in. There is currently a one-story dwelling and garage on the property. They are proposing to demolish the garage, construct a new dwelling and then demolish the existing house. They propose to live in the existing dwelling during construction of the new dwelling. They hope to be done within a year. They agree to consolidate the lots by filing a deed. They also agree to demolish the existing dwelling within 90 days after the issuance of a Temporary Certificate of Occupancy.

Mr. Dietrich stated that a lot frontage variance is required. This is a pre-existing condition.

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

MR. UNSWORTH – Craig and Tricia Ciliberto are the owners of the property located at 15 Willets Road, Marmora, also known as Block 479, Lots 55 & 56. They would like to construct a new home on the property. There is currently a house and garage on the property. They would like to live in the existing dwelling during construction of the new dwelling. They have testified that the neighbors are in favor of the application. They agree to a deed of consolidation. They are requesting a lot frontage variance. They agree to demolish the dwelling with 90 of the issuance of a TCO.

MRS. BURGIN – There was no public testimony.

A motion was made by Mr. Klepac and seconded by Mr. Unsworth, to grant the application for a use variance and lot frontage variance, with the standard conditions. Those in favor: Behr, Bergus, Burgin, Klepac, Pierson, Unsworth, Casaccio.

3. STEVE NICKELSBURG – BLOCK 811, LOT 2 – BA 38-03:

Application is for a use variance to allow 2 principal structures on one lot and a height variance to erect a tower with electric generation wind turbine at 1400 Commonwealth Avenue, Strathmere.

Steve Nickelsberg, 1400 Commonwealth Avenue, Strathmere, James Chadwick, PE, and Sky Simms, President of Ecological Systems, were sworn in.

Mr. Nickelsberg testified that he is proposing to install an electric generating windmill on his property. He feels this is a benefit to ecology and will hopefully reduce some of the pollution from the local power plant.

Mr. Chadwick testified that the applicant owns a single-family residence in Strathmere. The lot is approximately 26,000 sq. ft. and has a nearly unobstructed view of the ocean. The windmill would capture the winds to turn a rotor and generate electricity for use on the property. It will likely generate more energy than the property would utilize. This allows the applicant to send energy back to the electric lines through a power grid. They

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would gain a credit from Conectiv for the overage of energy that he does not use. The township engineer and zoning officer have determined that the windmill constitutes a second use on the property. The proposed structure will be located 31 ft. behind the residence. Power lines will run from the unit to cells stored on the property. This is the best location for the windmill. There are no bulk variances required except for height. A brochure was submitted and marked as Exhibit A-1. There will be very little visual obstruction. The site is particularly well suited due to its ability to capture the wind. The closest structure is over 200 ft. away from the proposed windmill. The unit is called a Whisper 175. The windmill will help reduce brown outs in this particular area. They would be using a renewable energy resource and conserving valuable natural resources. Utilizing wind saves natural resources such as coal. He believes there is no detriment to the public. He believes the variances can be granted without impairing the intent and purpose of the zoning ordinance.

Mr. Simms testified they have been in business for 20 years. He is certified by the North American Board of Certified Energy Practitioners. The utility companies and the State of New Jersey have implemented programs designed to encourage people to take advantage of these technologies in order to strengthen the infrastructure. With blackouts and brownouts point of use energy generation is one of the best techniques to reduce the load on grid particularly during peak times. This type of windmill is roughly 6 decibels louder than the ambient noise levels around it. The tower is similar to a flagpole with guide wires. The windmills are extremely quiet. He feels this is one of the best sites that he has worked since it is a wide, open area with no trees or obstructions. This part of New Jersey is a class 3 or 4 wind zone. The average annual wind speed is in excess of 13 mph.

There was discussion concerning the noise that will be generated by the windmill.

Mr. Simms testified that the batteries would be stored in the applicant's garage. He discussed maintenance. The unit weighs 155 pounds.

Mr. Nickelsberg testified that this is his full time residence. The structure will be installed in the marsh area. He agreed to enclose the windmill and guide wires with a fence for safety reasons.

The meeting was open to the public.

Arthur T. Ford, III, Esquire, represented Mr. & Mrs. Miles. They live directly across the street from the subject property. They object to the application. Windmills are not a permitted use in Strathmere. The DEP classifies them as industrial uses. He feels there is no rational basis to grant the requested variances. This is not an appropriate use in Strathmere. He does not feel the noise created by the windmill is fair to the neighbors.

Michael Miles, 1405 Commonwealth Avenue, was sworn in. He objects to the application. The windmill will be rotating above the applicant's house. The pole and

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blade will be 23 ft. above their house. This is equal to a 5 ½ story building. A black and white drawing of his home was marked as Exhibit A-1. He feels the windmill will reduce the value of his home. The windmill will obstruct his view of the sunset. He feels it is an uncharacteristic structure for Strathmere. Exhibits A-2 and A-3 show the applicant's home. Exhibit A-4 is a copy of the zoning map.

Mr. Chadwick disagreed with some of the comments made by Mr. Ford. The photo submitted by Mr. Miles showing the windmill over the applicant's house is not drawn according to scale. He feels the photos submitted are inaccurate.

The meeting was closed to the public and returned to the board for finding of fact as to whether the proposed electric generating windmill is a public utility under the ordinance.

MR. BEHR – Electricity is a public utility. He does not believe that in the ordinance individual generation was a thought of use when the ordinance was adopted. The fact that electricity is going to be generated and service the property could be considered strictly a use for the property. Excess electric flows back into the public utilities system. He feels this is a public utility.

MRS. BURGIN – She believes the State supports the use of the windmills by subsidizing the construction. The windmill will cost \$27,000.00 and the state will refund approximately \$20,000.00. The state considers this a valuable service.

MR CONRAD – He feels this is a private not a public utility.

MR. UNSWORTH – This is not a public utility. The intent is not to provide electricity for the public.

MRS. BERGUS – She feels this is not a public utility.

MR. PIERSON – He feels this is a public utility.

MR. KLEPAC – He feels this is a public utility.

MR. CASACCIO – Although the definition is weak, he feels this has a potential to be a public utility as far as licensing and regulation. The state and utility companies offer rebates back to the individuals.

A motion was made by Mr. Pierson and seconded by Mr. Behr, to interpret this as a public utility. Those in favor: Behr, Bergus, Burgin, Klepac, Pierson, Unsworth, Casaccio.

The board gave finding of fact in regards to the use variance to allow 2 principal structures on one site, use variance for the conditional use being public generation of electricity, use variance to allow the structure to be 10% of the height allowed.

MR. BEHR – Steve Nickelsberg is the owner of 1400 Commonwealth Avenue, Strathmere, also known as Block 811, Lot 2. The property is located in the RR and Conservation zone. He is proposing to locate an electric generating windmill on his property. The board has ruled that this is a conditional use. The tower exceeds the permitted height and requires a use variance. A variance is needed to allow 2 principal uses on one lot. The unit would produce electricity for his property. The structure

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promotes ecology. This decreases the need for fossil fuels. The structure will be located in the marsh. The applicant will fence in the structure and the 6 guide wires. The owner of the property directly across the street has indicated that the structure will limit his view and lower his property value. He feels the applicant has the right to develop his property. The intent is to have a sufficient, self-contained generating unit for electricity. He sees this as a benefit to the property and the environment. Testimony was given that the noise generated from the windmill is minimal.

MRS. BURGIN – The variance can be granted without substantial detriment to the public good.

MR. CONRAD – Other energy sources may come along that are a better situation. He agrees with the objector in some ways.

MR. PIERSON – The proposed use was uncommon in the past. He believes this is possibly the wave of the future.

MR. CASACCIO – This is a renewable resource. He does not feel the height of the structure is a detriment to the neighborhood. Not much of the unit will be seen above the house. This helps to preserve our natural resources.

A motion was made by Mr. Behr and seconded by Mr. Pierson, to grant the application as presented with the standard conditions and the structure and the guide wires be enclosed by a fence. Those in favor: Behr, Bergus, Burgin, Conrad, Klepac, Pierson, Unsworth, Casaccio.

E. RESOLUTIONS:

1. ROBERT & CYNTHIA OSTER – BLOCK 610, LOT 13 – BA 40-03:

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

2. RDJ ENTERPRISES, LLC – BLOCK 566, LOT 36 – BA 36-03:

A motion to adopt the resolution was made by Mrs. Bergus, seconded by Mr. Unsworth, and approved. Abstain: Casaccio.

3. GEORGETTI INVESTMENTS LLC – BLOCK 567, LOT 55 – BA 28-03:

A motion to adopt the resolution was made by Mrs. Bergus, seconded by Mr. Unsworth, and approved. Those in favor: Conrad, Klepac, Pierson, Unsworth, Casaccio. Abstain: Behr. Opposed: Bergus, Burgin.

4. ZONING BOARD OF ADJUSTMENT ANNUAL REPORT:

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

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A motion was made by Mr. Unsworth and seconded by Mr. Behr, to authorize Solicitor Marcolongo to attach draft a request to township committee for their consideration in the issue of windmills and renewable resources. The motion was approved with all in favor.

D. BILLS:

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

E. CLOSED SESSION:

A motion to go into closed session to discuss pending litigation was made by Mrs. Bergus, seconded by Mr. Behr, and approved.

F. ADJOURNMENT:

A motion to adjourn was made by Mr. Behr, seconded by Mr. Pierson, and approved. The meeting was adjourned at 12:05 a.m.

Submitted by,

Shelley Lea
Secretary