

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
FEBRUARY 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 7:00 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	Ted Klepac
Elizabeth Bergus	Jeffrey Pierson
Mary Jean Burgin	Matthew Unsworth
Frank Conrad	Paul Casaccio

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

B. APPROVAL OF THE JANUARY 8, 2004 MEETING MINUTES:

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

C. SPECIAL MEETING DATE:

Chairman Casaccio announced that a special meeting has been scheduled for February 18, 2004 at 7:00 p.m. The following applications will be heard at that meeting:

1. RDJ ENTERPRISES, LLC – BLOCK 566, LOT 36 – BA 36-03:
2. STEVE NICKELSBURG – BLOCK 811, LOT 2 – BA 38-03:
3. ROBERT & CYNTHIA OSTER – BLOCK 610, LOT 13 – BA 40-03:

D. TABLED APPLICATIONS:

The following application will be heard at the next regular meeting of the board scheduled for March 11, 2004.

1. THOMAS TOWER / ACTION SUPPLY, INC. – BLOCK 565.03, LOT 54 – BA 29-03:

E. APPLICATIONS:

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

Application is for preliminary approval of a proposed 17 major subdivision and a use variance to permit 7 age restricted duplex dwellings, 9 single family residential lots and one commercial lot and setbacks for existing structures at 1289 Route US 9 South in Palermo.

Jules Konschak, Esquire, represented the applicants. He stated that the experts believe that access off of Stephen Drive is a better situation in regards to traffic. An age restriction drafted in accordance with the Fair Housing Act was marked as Exhibit A-5. To enforce the age restriction a deed restriction would be filed. Copies of the deed restriction would be served upon the Township Clerk, Board of Education and, Township Tax Assessor. A Home Owners Association will be formed. The proposed age restricted units would not generate any school age children. He believes this would benefit the township.

The meeting was open to the public.

Charles Hattman, 9 Stephen Drive, was sworn in. He objects to the application. His main concern is safety and access. He feels the proposed subdivision will increase traffic. He feels that access to Queen Anne Court should be off of Route 9. There was discussion concerning the width of the road.

Carol Gallagher, 15 Stephens Drive, was sworn in. She had questions in regards to CAFRA permits. She stated that the traffic report made no reference to the hazard of the curve on Route 9. The school bus stop was changed due to the safety concerns at this intersection. She does not feel that trimming back the trees will help the safety concerns.

David Shropshire and Stephen Filipone, PE, were sworn in.

Mr. Shropshire testified that surveys were done around the Thanksgiving holidays. He does not believe there are any seasonal variations that would change the numbers. Vehicles are traveling over 45 mph through the curve. The safety of the curve and the site distance associated with Stephen Drive relates more to the speed of the highway. The overhang of vegetation could be trimmed back to give more site distance. Stephen Drive currently meets the D.O.T. requirements. They did not take any summer counts

Jack Kehoe, 3 Stephen Drive, was sworn in. He does not object to the proposed development. He submitted a drawing showing the line of site. The drawing was marked as Exhibit P-1. He has had numerous cars in his front yard.

Mike Talotta, 13 Stephen Drive, was sworn in. He is not against the proposed development. He submitted a placard with photos showing the intersection of Route 9

and Stephen Drive, a portion of the tax map showing the area and a portion of the applicants plan. The placard was marked as Exhibit P-2. He discussed the site triangle based on the N.J.D.O.T. Roadway Design Manual. He does not believe the curb meets the site stopping distance and left turn minimum distance requirements. He feels the access should be on Route 9 by the jewelry store. He would like a stop sign and speed bump installed. He also requested a temporary road access off of Route 9 during construction. He would prefer single family dwellings to age restricted housing.

Jim Fusco, 11 Stephen Drive, was sworn in. He asked questions in regards to enforcement of age restriction and the school system. He is against access off of Stephen Drive. He referred to a fatal accident that happened on Route 9.

Thomas Gallager, 15 Stephen Drive, was sworn in. He testified that the accidents along Route 9 prove that drivers travel in excessive speeds in this particular area. He objects to the access off of Stephen Drive.

Mr. Dietrich stated that there is vegetation that could be cut down and bushes in the D.O.T. right of way that could be obstructing view.

Barbara Hattman, 9 Stephen Drive, was sworn in. She has no objection to the proposed subdivision. She feels the access should be off of Route 9 instead of Stephen Drive.

Tim Zeits, 4 Stephen Drive, was sworn in. The school board would not allow the buses to go down Stephen Drive since it was too dangerous for the buses to get back onto Route 9. He feels the construction vehicles and additional traffic will be a detriment to their way of life. He is totally opposed to the development unless the access is changed from Route 9 to Stephen Drive.

Matthew Zeits, 4 Stephen Drive, was sworn in. He does not feel that the danger of the curve is being taken into consideration.

Mr. Korschak stated that the original plan did not include a connection with Stephen Drive. The access to the subdivision was on Route 9. They would not oppose changing the access back to Route 9.

Kathy Zeits, 4 Stephen Drive, was sworn in. She agrees with her neighbors. She feels the intersection will become even more dangerous if the proposed development is accessed through Stephen Drive.

Judy Sokolski, 14 Stephen Drive, was sworn in. She purchased her home on 9/30/02. She has had 4 near accidents at this intersection. She disputes some of the road counts provided by the traffic study. She referred to road counts provided by Dale Foster, County Engineer, obtained from the N.J.D.O.T. The study indicates that a 2002 traffic study on Route 9 passing Stephen Drive counted 17,881 vehicles daily. She referred to other data obtained from the Chamber of Commerce.

Valerie Bell, 16 Stephen Drive, was sworn in. She has a problem with the proposed duplexes since they are not permitted in the township. She would rather see single-family dwellings. She opposes the access off of Stephen Drive.

The meeting was closed to the public and returned to the board.

Mr. Korschak informed the board that during the break the applicant telephoned Mr. Smith. He has no objection to the access being on Route 9. He submitted a copy of the original sketch plat showing the access on Route 9. The plat was marked as Exhibit A-6.

The public was asked for their position on the access to Stephen Drive.

Jack Kehoe is in favor of Exhibit A-6. He does not want Stephen Drive connected to Queen Anne Court.

Charles Hattman is in favor of Exhibit A-6. He does not want Stephen Drive connected to Queen Anne Court.

Jim Fusco is in favor of Exhibit A-6. He does not want Stephen Drive connected to Queen Anne Court.

Thomas Gallagher is in favor of Exhibit A-6. He does not want Stephen Drive connected to Queen Anne Court.

Valerie Bell is in favor of Exhibit A-6. She does not want Stephen Drive connected to Queen Anne Court.

Judy Sokolski is in favor of Exhibit A-6. She does not want Stephen Drive connected to Queen Anne Court.

Carol Gallagher is in favor of Exhibit A-6. She does not want Stephen Drive connected to Queen Anne Court.

Kathy Zeits is in favor of Exhibit A-6. She does not want Stephen Drive connected to Queen Anne Court.

Michael Talotta is in favor of Exhibit A-6. He does not want Stephen Drive connected to Queen Anne Court.

David Schropshire testified that if this can be kept as a minor permit application there is a strong probability of obtaining a permit from N.J.D.O.T. to access onto Route 9. He is not sure how the state will view the jewelry store.

Vincent Orlando, PE, testified that the applicant would require a variance to allow a 45 ft. front yard setback.

Solicitor Marcolongo requested that the board make findings in regards to whether they have jurisdiction to rule on a variance requested for a use that is restricted in an area. The board has to determine if this is an application for a variance or an application for a zone change.

MRS. BERGUS – Georgetti Investments, L.L.C. is before the board requesting a use variance to allow single-family dwellings and age restricted duplexes on a property zoned as an Airport. She finds that the board of adjustment does not have the authority to rezone a property.

MR. PIERSON – He feels this is a good plan. The plan promotes the establishment of appropriate densities and concentrations in the community. The plan also promotes a visual environment. He feels the proposed concept is good for the township.

MR. KLEPAC – The public is not opposed to the development. The tax advantage of the age-restricted housing is an advantage to the township.

MR. AY – He feels the application is in the board's jurisdiction since the property was originally zoned residential. The proposed subdivision conforms to the neighborhood. The property is currently spot zoned. He bases his findings on 40:55D-70 of the Cox book.

MRS. BURGIN – She believes that allowing single-family dwellings and age restricted-duplexes in the Airport zone is within the jurisdiction of the board.

MR. CONRAD – The zoning of the property will remain Airport. Granting a use variance will allow the construction of single-family dwellings and age-restricted duplexes without changing the zone. He feels that the board does have jurisdiction to grant the variances.

MR. CASACCIO – The board solicitor has informed the board has to look at the geographic location and size of the parcel. The property was originally zoned residential and was converted to an airport zone to be used privately by Mr. Smith. This was not used as a commercial airport. Mr. Smith and his friends utilized the airport. The surrounding area is residential. There is a small commercial use in the front of the property. This is a small parcel containing only 16 acres. The duplexes are restricted to 55 and over. Duplexes are not a permitted use in the township.

A motion was made by Mrs. Bergus and seconded by Mr. Pierson, that this is a rezoning of the property and that the board has jurisdiction to grant the application. Those in favor: Ay, Burgin, Conrad, Klepac, Pierson, Casaccio. Opposed: Bergus.

Mr. Korschak requested a contribution of \$500.00 per lot to go into the Fire Safety Fund in lieu of the requirements in the ordinance and \$44,512.50 contribution to the Recreation Fund in lieu of the required recreation facilities.

Solicitor Marcolongo asked the board to give findings in regards to a use variance to allow 9 single-family dwellings and 7 age-restricted duplexes.

MR. PIERSON – The residents on Harry’s Court had no objection to the application with the exception of confirming that the 10 ft. buffer would remain. The public is in favor of the development except for Mr. Talotta who would rather not see age restricted housing. There will be direct access from Queen Anne Court to Route 9. He feels the age restricted housing will be a benefit to the township in regards to property taxes and not sending children to school.

MR. KLEPAC – The tax benefits of age restricted housing are significant. Contributions will be made to the fire and recreation funds.

MR. AY – He bases his findings on 40:55D-70(b).

MRS. BURGIN– She feels that 16 single family housing units is particularly suited for this property and would be in keeping with the surrounding adjacent residential neighborhoods to the north and south. No zone in Upper Township allows duplexes. The Township Committee has taken no action to allow duplexes or decrease the required lot size. She does not believe the testimony sufficiently satisfies the special reasons of L or E, to encourage senior citizen community housing. There will be no services or benefits for the seniors. The proposed duplexes will be situated in a neighborhood but will not be senior citizen community housing. The duplexes would be constructed on 20,000 sq. ft. lots rather than 40,000 sq. ft., thereby creating greater population densities and creating a negative impact on the environment. Tax advantage in and of itself does not support the granting of a use variance. There are sufficient special reasons for the granting a “D” variance where a proposed project carries out a purpose of zoning or the refuse to allow the project would impose on the applicant an undo hardship. Her opinion is that there is not an undo hardship that will be imposed if the variance for age-restricted duplexes with single-family homes is denied. The subject property can be developed with single-family homes that conform to adjacent properties.

MR. CONRAD – This will determine if this is the answer for adults over 55 that do not want to be in a gated community. This may be a good thing for the township. The applicant has demonstrated that this is something the township should start looking at.

MR. CASACCIO – He believes the proposal meets the positive criteria for senior housing since they will be deed restricted. This type of living, mixing seniors with families, is popular in other areas. He feels this is positive for the township. He believes the proposal meets the negative criteria since our current zoning ordinance does not allow duplexes or designates no properties that can utilize the Senior Housing Rule.

An motion was made by Mr. Klepac and seconded by Mr. Pierson, to grant preliminary subdivision approval, a use variance to allow 9 single-family dwellings and 7 age-restricted duplexes with deed restriction as set forth in Exhibit A-5, the only access from Route 9 via Queen Anne Court as shown on Exhibit A-6, front yard setback variance for Smith’s Jewelers on Route 9 and Queen Anne Court, with the condition that all issues set forth in the engineers original report will be addressed by the applicant, the bulk requirements pursuant to the original plans submitted, the creation of a home owners association, the home owners association will be responsible for notification to the Board of Education, Zoning Officer and Township Clerk every August prior to the start of school to ensure compliance with the age restriction, a contribution of \$500.00 per lot to the fire fund, a contribution to the recreation fund in the amount of \$44,512.50, no access

to Stephen Drive by way of Queen Anne Court as shown on the sketch plat designated as Exhibit A-6 with no access onto Stephen Drive by way of the easement, revise the plan to show any changes in the infrastructure for both the commercial development and change in configuration of the roadway and the standard conditions. Those in favor: Ay, Conrad, Klepac, Pierson, Casaccio. Opposed: Bergus, Burgin.

F. BILLS:

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

G. RESOLUTIONS:

1. JOHN MIRENDA – BLOCK 707, LOT 1 – BA 23-03:

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

2. LARRY MIGLIACCIO AND LEONARD MIGLIACCIO – BLOCK 348, LOT 94 – BA 27-03:

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

3. BRUCE & ARLENE SHAW AND ED GUARNACCIA, JR. – BLOCK 791, LOTS 36 & 37 – BA 39-03:

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

F. EXECUTIVE SESSION:

A motion to go into executive session to discuss pending litigation was made by Mrs. Burgin, seconded by Mr. Ay, and approved.

G. ADJOURNMENT:

A motion to adjourn the meeting was made by Mrs. Bergus, seconded by Mr. Ay, and approved. The meeting was adjourned at 10:50 p.m.

Submitted by,

Shelley Lea
Secretary