

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
OCTOBER 13, 2011**

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.

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Present: Christopher Phifer, Jeffrey Pierson, Andrew Shawl, Lynn Petrozza, Joseph Healy, Hobart Young, Edward Barr and Chair Paul Casaccio.

Absent: Ted Klepac and Matthew Unsworth.

Also in attendance were Dean Marcolongo, Board Solicitor; Paul Dietrich, Board Engineer; Janet McCrosson, Acting Board Secretary.

APPROVAL OF THE SEPTEMBER 20, 2011 MEETING MINUTES

A motion to approve the minutes was made by Mr. Pierson, seconded by Mr. Shawl, and approved. Abstain: Petrozza and Pierson.

PAUL DIETRICH WAS SWORN

TABLED APPLICATIONS

The following applications were tabled until a special meeting on Tuesday, October 25, 2011 at 7:30 p.m. The applicants have waived the time in which the Board has to act on the applications. No further notice will be required.

1. JOSEPH CALLAHAN – BLOCK 838, LOTS 16.01 & 16.02 – BA16-11
2. EUGENE & DAWN DOHERTY – BLOCK 735, LOT 2 – BA18-11
3. WILLIAM & BRIDGET BAILEY – BLOCK 456, LOT 20 – BA21-11
4. MICHAEL & ELIZABETH CLIFFORD – BLOCK 841, LOTS 15 & 16 – BA20-11

The following application has been tabled until a special meeting on Tuesday, November 15, 2011 at 7:30 p.m.

5. BRIENNA GINN - BLOCK 715, LOT 9 – BA15-11

RESOLUTIONS

1. WILLIAM J MCDANIELS – BLOCK 348, LOT 83.01 – SD 14-11

A motion to adopt the Resolution was made by Mr. Pierson, seconded by Mr. Shawl, and approved. Abstain: Pierson, Petrozza, Young.

2. DANIEL PASHLEY – BLOCK 566, LOT 37 – BA17-11

A motion to adopt the Resolution was made by Mr. Pierson, seconded by Mr. Phifer, and approved. Abstain: Pierson and Petrozza.

3. ATLANTIC CAPE BUILDERS BA12-11

A motion to adopt the Resolution was made by Mr. Pierson, seconded by Mr. Shawl, and approved. Abstain: Pierson and Petrozza.

4. SEASIDE CEMETERY COMPANY – BLOCK 599, LOTS 2,3,4 & 8 – BA04-11

A motion to adopt the Resolution was made by Mr. Pierson, seconded by Mr. Shawl, and approved. Abstain: Pierson and Petrozza.

BILLS

A motion to approve the bills was made by Mr. Shawl, seconded by Mr. Pierson, and approved.

APPOINT ACTING CHAIRMAN FOR THE T & R HOLDINGS APPLICATION

A motion was made by Mr. Shawl and seconded by Mr. Phifer to appoint Mr. Pierson as Acting Chairman during the T & R Holdings LLC application. The motion was approved with all Board members in favor.

CLOSED SESSION

A motion was made by Mr. Shawl and seconded by Mr. Phifer to enter into Closed Session to discuss pending litigation at 7:41 p.m. A motion to return to the regular meeting was made by Mr. Phifer, seconded by Ms. Petrozza, and approved.

APPLICATIONS

1. GARY & BARBARA SEAGRAVES – BLOCK 834, LOT 4 – BA19-11

Continuation of an application for variances for lot area, lot width, lot depth, rear and side yard setbacks, building coverage and street opening width for renovations to a single-family dwelling at 501 South Bayview Drive, Strathmere.

Mr. Pierson and Ms. Petrozza did not participate on this application.

Richard A. Carlucci, Esquire, represented the applicants. He indicated that the applicants have talked to the owners of the adjacent property as requested at the last meeting. He submitted color photographs of the subject property and surrounding area that were marked as Exhibits A-3 through A-34. Two sheets with two black and photos each was marked A-35 and A-36.

Gary Seagraves, previously sworn, testified the photos were taken two weeks ago. Exhibit A-3, 4 and 5 show that 3 cars can park on the street at this time. A-6 and 7 shows how his house sits further back on the lot than the adjacent structure; A-8 and 9 is the adjacent structure; A-10 shows how the bamboo on lot 5 blocks the light and air; A-11 shows how the bamboo is higher than his home; A-12 shows how close the neighbors shed is to his property line; A-13 shows how close the bamboo and fence are to his house; A-14 and 15 shows the neighbors storage and outside shower; A-16 and 17 show how the bamboo blocks his windows; A-18 shows the neighbors blind wall; A-18 shows the side of the neighbors house and the blind wall; A-20 shows the length of the blind wall; A-21 has a tape measure showing the blind wall is 8 ft; A-22 shows the distance between the two houses; A-23 shows the bamboo; A-24 shows his outside shower that would no longer be there if approved; A-25 is taken from inside his house showing how the bamboo blocks his view and light; A-26 and 27 are taken from inside his home and shows how the fence blocks his light, air and open space; A-28 the outside shower; A-29, 30 and 31 show other homes with parking underneath; A-32 shows the where no parking is allowed on the street; A-33 shows a house 3 doors down that would look similar to his garage and driveway; A-34 shows how the neighbors house sits closer to the road.

Mr. Seagraves testified that currently there is parking for 3 full size vehicles on the road. If granted he would be able to park two cars on the street and two cars in the garage. He has met with the neighbors and have agreed to use helix pilings rather than wood pilings. He agreed to install gutters on the house and to channel water toward Bayview Drive. He will provide the neighbors with a written list of all safety measures to be taken by the contractors prior to any work. The neighbors house will be inspected prior to and after any work being done. They will also provide proof of insurance of each contractor in a sufficient amount to cover any possible damage. He feels the proposed parking is beneficial to him and the public.

Mr. Bachich testified Exhibit A-35 is taken from the front porch of lot 5 looking as close to 90 degrees as possible. A-36 are photos of the subject property. The photos were taken today. The photos show that the house on Lot 5 is 14.5 ft closer to the road than the applicants home. The photo shows that the neighbors view would not be obstructed.

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Mr. Bachish testified the grade is 5.5 ft. In order comply with the flood elevation and the building code the building must be raised to base flood plus one foot. The house does not have heat or air conditioning. The building would have to be raised to elevation 12 which is 6.5 ft above grade in order to put ductwork under the structure. The applicant proposes to raise the structure an additional 2.5 ft in order to provide parking underneath.

The meeting was open to the public.

Suzanne Kubiak, Springfield, PA, previously sworn, submitted five photographs that were marked as P-3 through P-7.

James Garoh, Egg Harbor Township, previously sworn, testified that he took the photographs about 2 weeks ago. P-3 and P-4 show how close the applicant's house is to their fence. P-5 and P-6 show the back yard and the bamboo that he stated is there for water purposes. P-7 shows standing water on their lot.

Ms. Kubiak had questions regarding the drainage. She is in favor of the helix pilings. She does not oppose the applicants raising their home to meet the flood elevation, however she does oppose a slab for parking, the footers and solid block wall since they would restrict the natural flow.

Mr. Bachich stated the water that ponds on the corner could be piped down toward Bayview Avenue. Mr. Seagraves stated that he is agreeable if the neighbor shares the cost. Ms Kubiak stated that she is not willing to share the cost since everything works fine the way that it is now.

Charles Doyle, 500 Bayview Drive, was sworn. He feels the improvements would not block anyone's windows or view. He feels that getting 2 cars off the street would be a benefit. He also feels that to deny the applicant off street parking would be unfair.

Ken Weaver, 212 Bayview Drive, was sworn. He is 3 ½ blocks away from the applicants property. He raised his home in 1999 to meet the minimum flood requirements. He recommends that anyone raising their house in Strathmere go as high as the Township allows.

Andy Roach, 124 Prescott Street, was sworn. He is in support of the applicant raising his home because of the flooding. He is in favor of the off street parking.

Nathalie Neiss, Route 50, Petersburg, was sworn. She wanted to know more about the boxes the Board discussed for drainage.

Hearing no further comment the meeting was closed to the public and returned to the Board for findings of fact.

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MR. SHAWL – The Seagraves are the owners of 501 S. Bayview Drive in Strathmere, Block 833, Lot 4. They are proposing to raise their house above flood elevation and add parking underneath. The lot area, lot width, lot depth and rear yard setback are non-conforming. This is a corner lot and has two front yards. The current encroachment into the right of way would be eliminated. The building coverage will be increased. A variance is requested to permit a 19 ft curb cut where there currently is no curb cut. It has been testified that the changes are beneficial since off street parking will be provided and that the house is being raised out of the flood zone. This would be an aesthetic improvement to the neighborhood. Landscape plans were not submitted. The small size of the lot provides a hardship for the applicants. It is difficult to meet the setbacks since the lot is shallow and narrow. Testimony was given in regards to both the negative and positive criteria. The house is being raised only and not expanded. The history of the lot and structure are unique and both are pre-existing and non-conforming. There was significant public comment inside and outside of 200 ft. The Township vacated a portion of Bayview Drive to make the renovations possible. Photos of both the homes are in a book and look very characteristic of a northeast seashore town. Helix pilings will be used to address safety concerns. Safety measures will be taken by the contractors to protect the neighbor's home. Gutters will be added to the house. The back door will be removed. The applicant's architect agrees with the comments by the applicant in regards to the helix pilings, downspouts and other safety measures. The neighbors have indicated they are concerned the proposed block wall would obstruct the flow of ground water. The neighbors are not interested in sharing the cost for groundwater storage. Other neighbors are in favor of the proposed changes.

MR. PHIFER – Nothing to add.

MR. YOUNG – Nothing to add.

MR. BARR – Nothing to add.

MR. CASACCIO – The location of the houses on lots 4 and 5 are based on the septic locations. The house on lot 5 sits closer to the road than lot 4. The height would be compatible to other homes in the area.

Mr. Seagraves agreed to amend his application to install AVS boxes for drainage.

A motion was made by Mr. Shawl and seconded by Mr. Phifer to grant the application with the condition the applicant revise the plans to evidence curb and sidewalk on Sumner Avenue and a curb on Bayview Drive, revise zoning schedule to evidence technical variances, revise plans to evidence the use of helix pilings and gutters along the roofline with all rainwater being funneled toward Bayview Drive, there will be an inspection of the neighbors property before and after construction, the applicant will provide proof of insurance of all contractors to the owner of Lot 5 and the Board Engineer prior to all construction, the applicant will remove the picket fence parallel to Sumner Avenue, the proposed access will be an open air staircase with lattice, the applicant will revise the plans to evidence the ABS sub-surface drainage to the satisfaction of the Board Engineer, and the standard conditions. In favor: Phifer, Shawl, Healy, Young, Barr, Casaccio.

2. T & R HOLDINGS LLC – BLOCK 348, LOT 1.01 – BA01-11

Continuation of an application for amended site plan approval, a use variance since the TR zoning district does not specifically allow the marina use or multiple residential units, bulk variances and variances from providing storm water calculations and asphalt parking area, to renovate an existing tri-plex at 2 Meadowview Lane, Tuckahoe.

Chair Casaccio stepped down during this application. Mr. Pierson acted as Chair.

John Scott Abbott, Esquire, represented Robert Breunig, adjoining property owner. Mr. Abbott stated that the previous approval became null and void voluntarily since it was discovered that Chairman Casaccio had a conflict. He stated this will be a lengthy hearing and that he has many witnesses. He would like to eliminate any possibility of any conflict of interest since the matter could go to court. None of the Board members felt that they had a conflict. Mr. Abbott stated that his planner has questioned the validity of the notice. He believes the notice is deficient due to the amount of use variances needed. He believes that an environmental impact study is needed. Solicitor Marcolongo believes the notice is adequate.

Mr. Facenda stated that the notice is entirely valid. He stated the property is located along the Tuckahoe River in the TR zone. The applicant received approval in August 2009 to allow a marina and three residential units and other accessory improvements. These approvals were appealed in the Superior Court and as a result the applicant voluntarily agreed to remand the determination back to the Board for a new hearing. Since that time the applicant has been in the process of applying for and obtaining numerous outside approvals needed for the development. He believes they will provide information proving that an environmental study is not needed. The applicants are requesting approvals to permit the substantial renovations to include a marina on the first floor and three residential apartments on the second floor. Variances are needed for multiple principal use variance, marina and multi family use variance, density provisions, pre-existing non-conforming conditions in terms of lot area, depth, setbacks, building coverage, landscape buffering, stone parking lot, removal of asphalt and not providing concrete curbing. Waivers are also being requested.

Raymond Leps, 1150 Route 50, Petersburg, was sworn. Mr. Leps has lived in Upper Township for 20 years. He is the owner of Seaville Motor Sports where they sell watercraft, boats and motorcycles. He is a member of T & R Holdings along with Timothy Schellinger also a resident of the Township. Mr. Schellinger also owns businesses in the Township. Mr. Leps testified they purchased the property in December 2008. He testified that Exhibit A-1 showing the structure and a sunken 40 ft houseboat that has been removed from the site depicts the condition of the property when he purchased it. They have repaired the bulkhead after receiving a permit from the NJDEP. Since repairing the bulkhead the structure has not flooded and the water appears cleaner.

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Mr. Leps testified that everything under the tin roof of the structure is rotted. The joists are falling down. The structure is in worse shape now than when they purchased it since no improvements or repairs have been made. He feels the building is in need of significant rehabilitation. He referred to the present condition of the property as a "dump" and it is the first thing you see when coming over the bridge and into Upper Township.

Mr. Leps testified that they propose to utilize the same footprint. The three apartments will be located on the second floor in case of flooding. The first floor will be used as storage and a tool room. There will be a laundry room for the tenants. They are looking to sell bait in the portion of the first floor abutting the river. They propose ten boat slips. They will provide access for individuals who want to fish or kayak. They are hoping to winterize/de-winterize the ten boats that are stored on site. The facility would not be used as a shop for repairs. A boat ramp is not proposed. He agreed to a condition of approval that there would be no sale of gas or boats on site.

Mr. Leps agreed to a condition that there would not be any rentals of watercraft at this location. He agrees that anyone needing bait would already be on site as opposed to arriving by boat. He is not aware of any other place to buy bait in Tuckahoe. They do not propose to sell fishing licenses since there would not be staff on site at all times.

Mr. Maffei testified that the applicants propose a low intensity operation. He further testified that he prepared the site plan in 2009. Numerous revisions have been made to the plan since that time. He is familiar with the site and prepared the site plan before the Board last revised 8/23/11. The water front development permit was obtained and allowed them to install the new bulkhead and new dock. They propose to take this property that is in very bad shape and upgrade it, provide 13 parking spaces where vehicles can exit without backing into the road. He discussed A-2 an old photo (taken in the 30's or 40's) showing the bulkhead. After the picture was taken the bulkhead on the northwesterly side was pulled in to create more water area.

Mr. Maffei testified the property is .49 acre. The applicants were contacted by DOT in regards to the bridge being replaced at sometime. The DOT has indicated that the applicant's plans have no effect on their plans. He explained that although Yanks is also a marina it is a full service boat facility where they build large boats and speedboats, unlike the proposed marina. In the southwesterly corner is an approved raised septic system that meets the County Health Dept. rules. The septic has been approved and installed. They are proposing stone in the parking area rather than paving to stop some of the storm water and prevent erosion. Along the bulkhead are fish cleaners and fish receptacles required by DEP. A trash enclosure is also proposed.

Mr. Maffei testified that providing a public marina contributes to the general welfare. The CAFRA permit is now at DEP and a compliance statement is needed as part of the process. The statement is actually much more intense than the environmental impact study, hence the reason for the waiver. Physical and visual public access would be

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gained by an open parking lot and open bulkhead to promote general welfare. In regards to density Mr. Maffei stated that most of the new homes in the township are 4 bedrooms and are larger than the structure on this property.

Mr. Maffei testified the lot is particularly suited since the river is needed for a marina. The apartments have existed historically. He stated that although these are not affordable apartments they are only one bedroom making them more affordable. There are a number of recreational opportunities provided on site as required by the NJ shoreline resources. Besides recreational there are also birding, eco and kayak tours and sightseeing. He believes the marina and the recreational uses would advance the State's policy.

Mr. Maffei stated that waivers are needed for storm water calculations and environmental assessment. According the subsection in the ordinance a waiver of the environmental assessment may not be needed since they are in the process of obtaining a CAFRA permit. He believes that the promotion of general welfare constitutes a special reason for the granting of any variance requested. The proposal also preserves coastal wetlands. The lot is slightly larger than the other lots on this side of Meadow View Lane. It is his opinion the proposed development would promote a desirable visual environment. He testified this would not have a negative effect on the zoning ordinance or zoning plan. Marinas are encouraged throughout the Township, County and State. He does not believe there would be any substantial impairment to the public good by any of the variances sought.

Mr. Dietrich commented that the compliance statement and the documentation they provide as part of the CAFRA permit exceeds what is required by ordinance even though it is in a different format. He recommends the waiver be granted.

Mr. Maffei testified the concrete curbing is not a benefit and would add impervious surface to the facility. An open design would not allow the water to be contained in one section. He feels the proposed stone parking area would be more environmentally friendly. Although there is not a landscape buffer on the site currently the ordinance requires a 25 ft wide landscape buffer. He does not believe the buffer would be a benefit since the State requires visual access. Public access and view would be better without the buffer. He believes the negative criteria are satisfied in regards to these variances.

Mr. Maffei testified the lot does not meet the requirements like the rest of the lots on this road. Variances are needed for lot area, lot depth, front yard setback, side yard setback, rear yard setback, building coverage and impervious lot coverage and landscape buffer. These non-conforming conditions are staying as they are and not being changed. None of these conditions are being exasperated. Lot frontage and lot width comply with the ordinance. They have met the parking requirements in the ordinance. He believes the positives that go along with the application are the aesthetics, structurally and the building would be above flood elevation. The elevation in this area is 9 and the finish floor needs to be at least a 10.

Mr. Maffei further testified both the NJDEP and the Army Corp of Engineers issued permits to allow the bulkhead as shown on the plan, the new floating docks, rafts and the configuration of the slopes. They required 6 parking spaces for the boat slips, trash enclosure, fish cleaners as well provisions on site for spills. In the process of issuing its approval Army Corp of Engineers consults with the US Coast Guard who had no objections. The Army Corp determined there was no negative effect on navigation within the Tuckahoe River. They also require that the project be designed so that it avoids impact on existing wetlands. The Corp considers this project as a water dependent activity. They also required the project be designed with minimal environmental impacts. They want to be sure that the fill being used is clean fill. Slightly after construction on the bulkhead both Army Corp and DEP representatives were on site. The Army Corp consulted with the National Park Service concerning potential impacts on the Tuckahoe River. The National Park Service had no objection to the plan as proposed. The Army Corp also consulted with the US Environmental Protection Agency and Fish and Wildlife and the Marine Fishery Service. There were no negative impacts found on the federal listed threatened or endangered species, their habitats or water quality. Correspondence from the Army Corp detailing this info is contained in Exhibit A-7. Exhibit A-3 is the permit issued by the DEP for the installation of the bulkhead, docks and ramps. Exhibit A-4 is correspondence from the Cape May County Planning Department waiving the application since it is on a State road. Exhibit A-5 is a septic permit from the Cape May County Department of Health for 3 one-bedroom apartments. Exhibit A-6 is the permit from the Department of the Army. Approvals were also obtained from Cape Atlantic Soil District.

Mr. Dietrich asked what the proposed roof height is compared to the existing roof height since part of the building is now only single story. Mr. Maffei will supply this information at the next meeting.

Solicitor Marcolongo announced that this matter would reconvene on November 10th.

A motion to adjourn the meeting was made by Mr. Phifer, seconded by Ms. Petrozza, and approved.

Submitted by,

Shelley Lea