

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
JULY 9, 2015**

The regular meeting of the Upper Township Zoning Board of Adjustment was held at the Township Hall, 2100 Tuckahoe Road, Petersburg, New Jersey. The meeting was called to order at 7:30 p.m.

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Present: Joseph Healy, Christopher Phifer, Susan Adelizzi, Andrew Shawl, Carol Tutelian, Matthew Unsworth and Paul Casaccio.

Absent: Sherri Lisa Galderisi, Ted Klepac, Alistair Lihou, Lynn Petrozza.

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

SWEAR IN BOARD PROFESSIONALS

APPROVAL OF THE JUNE 15, 2015 MEETING MINUTES

A motion to adopt the minutes was made by Mr. Unsworth, seconded by Mr. Shawl, and approved. Abstain: Healy.

APPLICATIONS

1. JOYCE A. JOHNSON – BLOCK 547 LOTS 3.01 & 3.02 – BA15-15

Applicant is requesting a one year extension of variances previously approved as part of a subdivision at 102 and 104 Tyler Road in Greenfield.

Joyce A. Johnson, 46 Jill Avenue, Marmora, was sworn. She testified that variances for front yard setback and lot frontage were approved on July 11, 2013 as indicated in Resolution BA07-13. The reason for the request is that she is not ready to build at this time.

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

MR. UNSWORTH – Joyce Johnson is the current owner of the property. Ms. Johnson is entitled to 3 one year extensions. She has testified there are no changes to the previous approvals. There have not been any changes to the zoning on the lot.

A motion to grant the extension was made by Mr. Shawl and seconded by Mr. Healy. In favor: Healy, Phifer, Schmidt, Shawl, Tutelian, Unsworth, Casaccio.

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2. ADVANTAGE EQUIPMENT SALES LLC AND ATLANTIC CAPE BUILDERS LLC
- BLOCK 600 LOTS 26 AND 30 - BA25-14

Applicants are requesting an interpretation of the zoning officer's administrative decision requiring site plan approval at 100 and 112 Route US 9 South in Marmora.

Joseph Healy and Carol Tutelian stepped down during this application.

Julius Konschak, Esquire, represented the applicant.

Solicitor Marcolongo marked as Exhibit B-1 correspondence to Advantage Equipment Sales, dated August 22, 2014. Exhibit B-2 is a narrative prepared by the Zoning Official.

Thomas Tower, 1413 Stagecoach Road, Seaville and Vincent Orlando Professional Engineer and Planner, were sworn.

Mr. Konschak gave the history of the subject lots. He stated there is some confusion as to whether or not a site plan is needed for current activities on the site. Solicitor Marcolongo stated this is what is known as a Notice to Appeal and is under the jurisdiction of the Zoning Board. In August 2014 the Zoning Official made the determination that the continued operations on this property required site plan approval. The applicant has filed an appeal and they assert that they do not need site plan approval.

Mr. Konschak stated there have been many approved site plans for this property throughout the years. He stated that a site plan would only be needed if there were changes to the parking or septic. He stated that in 2004 a site plan was approved to allow 76% outside storage and display. In 2006 the businesses on these lots closed and the applicant acquired lot 30 in 2011. He reviewed the zoning permits that were issued to re-open the facility and another to allow Comcast to utilize a portion of the property. Later the owner acquired lot 26 in a sheriff sale and then lot 32. He stated that the landscaping shown on the approved plan has been restored. The drainage basin that was shown on the plan but never installed has been revised to meet the current standards and is included on the plan. He stated that everything on site is for sale. He went on to explain that the applicant has recently purchased the former car dealerships on the opposite side of Route 9 and has rehabbed them as well.

Thomas Tower testified that he is the owner of the subject properties. He testified that the equipment on site is for sale. There is an office for the operation on lot 30. He testified that he had the landscaping put back in. He is aware the basin needs to be constructed in accordance with the site plan. He further testified he relied on the zoning permits that were issued.

The board briefly discussed signage. There was discussed regarding whether or not the equipment for sale must have titles and registrations. Mr. Konschak agreed the cable vehicles on site are not for sale but they can be parked on the property. The cable trucks are parked on lot 26 and they lease an office on lot 30.

The narrative prepared by the zoning official and dated July 9, 2015 listed the zoning permits obtained by the applicant for each property. The parking and display of new and used vehicles and equipment associated with Advantage Equipment Sales was to be on lot 26 only. The equipment is currently on lot 26, 30 and 32. Comcast vehicles were to be parked on lot 30 only;

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however they are on both lots 26 and 30. A permit was issued for a fence along the lot lines on 26. Additional fencing has been added without approvals. In conclusion it is not clear as to where the uses are located on the property and what types of uses are there. It is not clear as to whether the vehicles and equipment on these lots are for sale or being stored. A site plan would designate areas and include the size of each area for each specific use and would also address the signage on the building.

Vincent Orlando testified the lots are in the TCC zoning district. He testified this zone allows retail sales, offices and equipment storage. He read aloud Chapter 19 section 4 a, indicating when a site plan is required. He testified the applicant is not doing any new construction, there is no change of use on the property, the number of parking spaces is not being increased, there is no intention of creating a storage yard greater than 1,500 sq. ft. in area and there are no changes to the access. Mr. Orlando testified the 2004 plan is the same as the new plan prepared by his office, dated 7-1-14, except for the change in the basin design. Based on the definition of a change in use referred to section 19-3 Definitions, he does not believe this is a change in use. He believes that a new site plan should not be required.

Mr. Dietrich stated that the variance that was applied for was for new and used auto sales and that was what was predicated and presented as what would be displayed. What is on the property now is not what was on the property when the notice was sent ten months ago such as the Coca Cola trucks. Mr. Tower testified the drainage would be in place within twelve months.

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

MR. SHAWL – Advantage Equipment Sales LLC and Atlantic Cape Builders LLC are before the board for property located on Route 9 in Marmora. The zoning officer has determined that site plan approval should be required for the existing and current use on the property for equipment sales and storage. A resolution was adopted in 2004 to allow the previous owner to store and sell vehicles on the two separate lots. The current owner believes that the conditions of the 2004 resolution are being followed. The applicant is willing to address the outstanding issues resulting from the resolution and will have the property in conformance within twelve months. The zoning official has determined since some of the equipment for sale doesn't require a title the original intent of the resolution is not being followed. The applicant is before the board to present evidence proving that they do not need site plan approval because what is there meets the definition of the code and no changes have been made in the use of the properties. He stated that a change of use is any change in occupancy that would result in an increase of required off street parking or sanitary flow. The first five provisions of the definition were read into the record and none of those activities were triggered. The board heard testimony that everything on lots 26, 30 and 32 is for sale. The sales office is on lot 30. The TCC zone allows retail sales, equipment storage, offices, and is the most flexible zone in the township. The lots are located along Route 9 which has significant traffic. Lot 30 is located on Tuckahoe Road which also has considerable traffic. Zoning permits were applied for as the properties were acquired and they addressed utilizing the existing display area and utilizing a portion of the building and parking spaces for Comcast. There was no public comment. He finds that whether or not a vehicle requires a title is not being flexible. He finds that site plan approval should not be required.

MR. PHIFER – He agrees that a site plan approval is unnecessary.

MR. UNSWORTH – He concurs.

MS. SCHMIDT – She concurs.

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MR. CASACCIO – He concurs.

A motion was made by Mr. Shawl and seconded by Mr. Unsworth, not to require a new site plan and that the applicant will install the drainage basin on or before June 30, 2016. In favor: Phifer, Schmidt, Shawl, Tutelian, Unsworth and Casaccio.

3. MARION LOTKA – BLOCK 731 LOTS 4 & 5.01 – BA 13-15

Applicant is requesting a use variance for expansion of a non-conforming use and variances for rear yard setback and distance between buildings, to construct an addition to an existing single family dwelling in the TCC zoning district at 17 Allendale Road in Marmora.

Marion and Charles Lotka, 17 Allendale Road, Marmora, were sworn. Mrs. Lotka testified that they have owned this property for 10 years. They have done major repairs to the property. She reviewed each of the requested variances. The property is located in the TCC zone so a use variance is needed to construct an addition to the single family dwelling. A rear yard setback is needed to allow 23.2 ft. where 25 ft. is required. A variance is needed to allow 14.7 ft. where 15 ft. is required between the proposed addition and the existing shed.

Mrs. Lotka testified the surrounding area is residential. She also testified that aesthetically this is the best location for the addition. The proposed addition would provide much needed living space since the existing footprint is very small. She is hooked up to city water.

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

MR. SHAWL – Marion Lotka is before the board regarding 17 Allendale Road also known as Block 731 lots 4 & 5.01. The property is located in an existing residential neighborhood. The property is located in the town center which does not allow single family dwellings. Mrs. Lotka is planning an addition for much needed living space. The addition would complement the house and retain the residential character of the property. There was no public comment.

MR. PHIFER – He concurs.

MR. UNSWORTH – The construction and addition is consistent with what is in the neighborhood now and also with the size of the homes in the neighborhood.

MS. SCHMIDT – She concurs.

MR. HEALY – He concurs.

MR. CASACCIO – He concurs.

A motion to grant the requested variances was made by Ms. Schmidt and seconded by Mr. Unsworth. In favor: Healy, Phifer, Schmidt, Shawl, Tutelian, Unsworth, Casaccio.

4. GEORGETTI INVESTMENTS LLC – BLOCK 567 LOTS 55.02 THROUGH 55.17 – BA14-15

Applicant is requesting to modify a previous use variance requiring age restrictions on duplex dwellings and duplex approved vacant lots to be used as non-age restricted single family dwellings at Queen Ann Court in Palermo.

Mrs. Tutelian stepped down during this application.

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Julius Korschak, Esquire, represented the applicant. He stated that when the application was originally approved the property was zoned Airport. Since that time the zoning has changed to R2. In 2004 the applicant received a use variance to allow residences in the Airport zone. He also received a variance to allow nine single family dwellings and seven duplexes to be age restricted. Since that time Mr. Georgetti has built only four of the duplexes and has had a difficult time marketing them. He would like to construct single family dwellings on the vacant lots rather than the duplexes. The R2 zone allows single family dwellings.

Mr. Korschak explained that the applicant is also the president of the home owners association. He has spoken with each of the owners in the subdivision and they have all signed a letter saying they want the three duplex lots to become single family and the age restriction on the existing duplexes to be eliminated. He stated that the age restriction is a hardship on the applicant and does not fit with the zoning.

Scott Georgetti, 828 Stagecoach Road, President of Georgetti Investments and President of the Condo Association, was sworn. Mr. Georgetti testified that after he received the use variance the economy started taking a change for the worse. He tried to redesign the units but they are still not selling. He stated that resale of the properties is extremely sluggish and he would like to remove the age restriction on each of the lots.

Vincent Orlando, previously sworn, testified that the applicant proposes to convert the vacant lots (55.06, 55.10, 55.12) from duplex to single family and the age restriction be lifted. On the other four lots (55.05, 55.08, 55.14 and 55.17) where there are existing duplexes they would like the age restriction removed. He feels three purposes of zoning would be advanced, a, e and g. He also believes there would not be a substantial impairment to the intent of the zone plan and there would not be any substantial detriment to the public good. Solicitor Marcolongo stated the applicant is requesting an excision of a condition of the prior use variance.

Mr. Orlando testified in regards to the septic. They will give the County notification that the duplex units are being changed from age restricted. Mr. Dietrich recommended a condition of approval be the authorizing of a corrective plat. Mr. Korschak stated that he will also prepare a deed to be signed by the Chairman of the board saying that the age restriction is eliminated. They plan to deactivate the master deed. Mr. Dietrich recommends the applicant review the labeling of the lot numbers with the tax assessor.

The meeting was open to the public.

Skipp Angelo, 22 Queen Ann Court, was sworn. He recently purchased this property and had a very difficult time getting a mortgage. He had to pay a higher rate since it is non-conforming. He is in favor of the application.

John Hanson, 24 Queen Ann Court, was sworn. He has lived here for 9 years. His house has been on the market for 2 ½ years. He feels the age restriction is a detriment for selling.

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

MR. SHAWL – Georgetti Investments is before the board regarding property at Queen Ann Court. The applicant is asking to modify a use variance to remove prior conditions requiring age restrictions on duplex dwellings and duplex approved vacant lots so he can build single family

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homes. The applicant has testified there are vacant lots left in the subdivision eleven years after approval. The condo association is in favor of removing the age restriction. Testimony from the public supports the request. Testimony has been given by a licensed planner that the purposes of zoning can be advanced by removing this condition. Special reasons a, e and g are applicable to this decision. He finds there would be no substantial detriment to the zoning plan since the zoning district has changed and the R2 zone allows single family development. He feels single family dwellings would be more consistent with the master plan.

MR. PHIFER - He concurs.

MR. UNSWORTH – He concurs. There would be two deeds, one to remove the age restriction and the other changes the condo association so there would not be four separate deeds.

MS. SCHMIDT – She concurs.

MR. HEALY – He concurs.

MR. CASACCIO – He concurs.

A motion was made by Mr. Unsworth and seconded by Ms. Schmidt, to grant the excision of the requirements of age restriction on the existing duplexes and that the three vacant lots would be developed as single family dwellings only with the conditions that the Martinelli plan would be revised so that the three vacant lots would be developed as single family dwellings only and not two family dwellings as currently shown on the plan, the single family dwellings will have no age restriction on them, the applicant will notify the Cape May County Health Department of the change including the removal of the age restriction as to the duplex lots, the approval will authorize the Chairman to execute a corrective subdivision plat and corrective master deed and the applicant would consult with the tax assessor regarding the new lot numbers prior to the filing of the plat. In favor: Healy, Phifer, Schmidt, Shawl, Unsworth and Casaccio.

BILLS

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

RESOLUTIONS

1. LAWRENCE FENIMORE – BLOCK 558 LOT 36

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

2. HARRY AND VERONICA SAUERBREY – BLOCK 568 LOT 8

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

ADJOURNMENT

A motion to adjourn the meeting was made by Ms. Schmidt and seconded by Mr. Unsworth. The meeting was adjourned at 9:14 p.m.

Submitted by,

Shelley Lea