

**UPPER TOWNSHIP PLANNING BOARD  
MEETING MINUTES  
OCTOBER 19, 2017**

The regular meeting of the Upper Township Planning Board 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: Georgette Costello, Joseph Harney, Ted Kingston, Gary Riordan, Committeeman Hobart Young, Robert Young, Mayor Palombo, Roy Zehner, Chairman James Kelly.

Absent: Michael Endicott, Scott Morgan.

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

**APPROVAL OF THE SEPTEMBER 21, 2017 AND SEPTEMBER 26, 2017 MEETING MINUTES**

A motion to approve the minutes was made by Mr. Harney, seconded by Mr. Kingston, and approved. Abstain September 26<sup>th</sup>: Palombo. Abstain September 21<sup>st</sup>: Kelly and Palombo.

**APPLICATION**

1. NEW MARKET ENTERPRISES LLC – BLOCK 653.01 LOT 6 – PB 11-17

Application is for a setback variance for a monument sign, 20' required, 5' proposed and a site plan waiver at 8 Route US 9 South in Marmora.

Paul Dietrich stepped down during this application.

Andrew Catanese, Esquire, represented the applicant. Mr. Catanese explained the applicants received site plan approval earlier in the year to convert an existing bank building into an urgent care facility as shown in Resolution PB 06-17. They are now requesting to replace the existing sign with a new monument sign that would be conforming as to its size but non-conforming as to its location.

Robert L. Reid, Professional Planner, was sworn. Mr. Reid testified the applicant's prior application was to utilize the existing monument sign on the property. Since then the applicants have decided a larger sign would benefit the patients by helping them find the location. The proposed sign is more attractive than the previously approved sign and includes the property address. The proposed sign would be internally lit and would match the building. The sign would be setback 5' and would not be located inside of the

site triangle. The proposed sign area is 73.9 sq. ft. which is less than the 75-sq. ft. permitted in the TCC zone.

Mr. Reid testified that he sees no detriment in having a larger sign. He feels the deviation being requested is a continuation of the previous non-conforming setback and would not cause a detriment to the community or the zone plan. The sign would promote the free flow of traffic by guiding people into the site and reduce traffic congestion. This is the best location for the sign. He believes the variance can be granted without substantial detriment to the zoning plan and zoning ordinance.

The meeting was open to the public.

Nathalie Neiss, 759 Route 50, was sworn. She asked why Mr. Dietrich stepped down.

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

MRS. COSTELLO – The applicants are being represented by Anthony Catanese, Esquire. The applicants are requesting a setback back variance for the proposed monument sign under the C2 standards. They are requesting a 5' setback where 20' is required. Expert testimony was given by Robert L. Reid, Project Planner. The sign is 73.9 sq. ft. less than the 75 sq. ft. permitted. They are utilizing the same setback previously approved and making the sign area larger. The sign has been in this location without any detriment since the granting of the original site plan. There was no public comment regarding the sign.

COMMITTEEMAN YOUNG – The applicant has met the burden of proof as far as the good outweighing the negative. He finds the proposed sign would enhance the entry way into the township. He likes the design of the new sign and finds the sign would enhance the visibility. He believes the new sign would increase safety by making the property easier to find. He sees no detriment in granting the variance. The sign would exceed 3' in height.

MR. HARNEY – He concurs. He finds the proposed sign is a benefit to the motoring public. The new sign would include the property address.

MR. YOUNG – He concurs.

MR. ZEHNER – The applicant's experts have satisfied his concerns regarding the site lines.

MR. RIORDAN – He finds the larger sign would promote public safety by promoting less traffic congestion.

MR. KINGSTON – The proposed setback for the sign is the same as the previous non-conforming sign. He sees no detriment to the area by granting the variance.

MAYOR PALOMBO – He concurs.

MR. KELLY – He has nothing to add.

A motion was made by Committeeman Young and seconded by Mr. Harney to grant the application with the standard conditions. In favor: Costello, Harney, Kingston, Riordan, Young, Committeeman Young, Zehner, Mayor Palombo, Kelly.

2. STEPHEN HARTSOUGH AND MARK BARHAM – BLOCK 574 LOT 6.13 & 14 – SD 01-17

The continuation of an application is for a minor subdivision to create three lots from two existing lots and variances for lot frontage, lot width, lot area, lot depth and building coverage and impervious coverage at 32 Victoria Lane and 1016 Route US 9 South in Palermo.

Paul Dietrich rejoined the board and was sworn. Robert Young and Georgette Costello stepped down during this application.

Solicitor Marcolongo briefed the board and the public on the application which first came before the board on June 15, 2017. At the last meeting Mr. Konschak was asked to send buy/sell letters to the adjoining properties. This did occur and there were three negative responses and one no response.

Julius Konschak, Esquire, represented the applicants.

Joseph Maffei, Professional Engineer, was sworn. He testified that the plans he prepared, last revised 8/3/17, show the building envelope allowed in the ordinance, however it does not include the final location of the new home.

The public portion of the meeting continued.

Michael Kelly, 25 Victoria Lane, was sworn. He submitted a large board with 10 photos and a diagram that was marked O-11, a large board with 9 photos marked O-12 and another large board with 9 photos was marked O-13. He is employed by the Atlantic County Prosecutors Office. His main concern is safety since there are a lot of children on the street. He discussed A and B in Exhibit 0-11 that shows the vehicles parked on the cul-de-sac in front of Mr. Hartsough property. He stated that many times he is not able to park his own car in front of his property. He discussed trash pickup, leave collection and snow plowing. Other concerns are emergency vehicles in the cul-de-sac.

Mr. Kelly believes that if an additional lot is approved in the cul-de-sac his property value would be reduced. He bought his property believing this was an established neighborhood. He stated there are a lot of kids that live on the street and others that come there since it is a safe neighborhood. He cannot support the proposal since there are too many issues. He stated an additional lot would create another driveway, mailbox and more traffic in the cul-de-sac.

Krista Grisly, 29 Victoria Lane, was sworn. She moved here with her family seven years ago. They moved here since this is a developed area that is a safe place to raise children. She has concerns about this proposal since she feels it would no longer be a safe community for all the children. She is concerned about construction, traffic and the safety of the children. She feels the integrity of their neighborhood is in jeopardy. She submitted five photos showing children playing and adults walking their dogs that were marked 0-14.

Ed Avena, 27 Victoria Lane, was sworn. He purchased his property on June 28, 2017 and was not told about the proposed subdivision. He bought his home since it was a closed subdivision.

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He does not believe a subdivision should be granted on this cul-de-sac. Mr. Crane's testimony that after 2,500 to 3,000 planning board applications he has never seen a lot like this being proposed concerns him.

David Krogman, 36 Victoria Lane, was sworn. He agrees that the cul-de-sac is congested. He feels the value of creating another Victoria Lane address is creating safety, traffic and parking concerns for the residents. He feels that part of the attractiveness of the neighborhood is that it is a developed community and the houses are of a similar type and standard.

Bonnie Krogman, 36 Victoria Lane, was sworn. She has lived at this address for nineteen years. She testified that this is a very busy cul-de-sac and there are a lot of children that play in it. She is concerned with the additional driveway and extra traffic. She is also concerned about safety because of the curve in the proposed driveway and property values. She does not support the proposal.

The meeting was open to the public outside of 200 ft.

Helen Mary Schoedler, 33 Klains Lane, was sworn. She has lived here for 19 years and has known the applicants for 13 years. She doesn't believe there is a safety concern since she never sees kids playing in the cul-de-sac when she walks her dog. In regard to what the applicants have given back to the community she stated that Mr. Hartsough is a fire fighter and scout leader and Mrs. Hartsough is a school teacher. She is confident the applicants would build a nice home.

Michael Edwards, 37 Victoria Lane, was sworn. He purchased his property in January of 2016 and he grew up in the township. He feels the subdivision should not be approved since this is an established neighborhood. He believes that privacy will now be an issue. He is concerned about the safety of his children. He feels the construction vehicles are a concern to his kids and will have a negative effect on the street.

A resident of 18 Seasounds Avenue, was sworn. He grew up on Victoria Lane. His kids ride their bikes on Victoria Lane and he does not feel there would be a safety issue in granting the application. He is in support of the application.

Racheal Tridente, 38 Victoria Lane, was sworn. She purchased her property in 2013. She does not agree with the proposal. She is concerned about the safety of her children. She stated that there are kids on the street playing after school every day. She asked about a time line for construction if approved. She stated that every homeowner with the exception of one has been attending the meetings. She doesn't feel the proposal will help the property values.

Kris Raymond, 1000 Willetts Road, was sworn. He stated that adding another driveway in the cul-de-sac would increase traffic. He stated that eight families are immediately effected by the application and they are against the variances.

Nathalie Neiss, 759 Route 50, Petersburg, was sworn. She has not heard a hardship for granting the variances. She stated the applicants could sell both properties. She asked why the driveway is not on Route 9 instead of an established neighborhood. She asked what the house would look like.

The meeting was closed to the public.

Mr. Lisitski gave his summation. He stated that the application would create three non-conforming lots. He also stated that lot 14.02 was never intended to be part of the Victorian Lane subdivision, since this lot is so out of character with the other lots on Victoria Lane. The applicants have designed a driveway with twists and turns and is oddly shaped just to have access and an address on Victoria. He stated this is a hardship created by the applicants. He sees no benefit to the public in granting this non-conforming lot that is inconsistent with the neighborhood. He finds the only benefit is economical. His clients, the Maranacus's have been friends with Mr. Hartsough for 14 years and the commercial business he has operated in the neighborhood for a long time and the proposed subdivision has created a burden to them and the residents. The cul-de-sac is so crowded already that adding anything to it is a risk. The residents are concerned about the 22 children that live on the street. Four residents spoke in favor of the application and basically said that Mr. Hartsough is a nice guy and does things for the community. Thirteen people spoke against the application and the residents within 200 ft. are the most effected. The neighbors are concerned about the safety of their children and property values. He reviewed the testimony given by Mr. Crane and Mr. Chadwick. He reviewed each of the variances requested. He stated that the C1 hardship criteria has not been met. He stated that regarding the C2 variance there is no purpose of zoning that was presented that has any validity. The proposed lot is a rectangle and not a unique shape. Granting this variance would create a lot with non-conforming frontage and width like the lot on Route 9, lot 14, that does not touch the Victoria Lane subdivision.

Mr. Lisitski stated there is no purpose of zoning that was presented that has any validity. He disagrees that section e is a special reason for granting the variance since lot 14 is already a residential lot and does not help preserve the environment. He disagrees that Section g applies since there were no environmental requirements discussed and the proposed lot is inconsistent with the other lots in the development. He stated there are no specific benefits to the Victorian subdivision by approving this subdivision. There is no evidence of a community benefit. He asked the board to deny the application.

There was a 5 minute recess.

Mr. Korschak stated that he was involved in the original Victoria Lane subdivision and the deed restrictions. He stated that the 54 ft. lot frontage on lot 12.02 was granted in 1987 because that was the required right of way width for roads. He stated that just about all the lots in the Victorian Lane subdivision are non-conforming since they do not have 140 feet of frontage and 40,000 sq. ft. of lot area. The experts have confirmed this is an appropriate use of the land and there are two hardships. The proposed frontage is the same as the lot next to it. The lot owned by the applicant has the most frontage on Victoria. If approved Mr. Hartsough's lot would still have more frontage than required. There is a hardship because of the shape of the two existing lots. He stated the applicant has agreed to landscaping along the property and to erect a fence and would agree to an additional condition to comply with the deed restrictions for the Victoria subdivision as shown in 0-3 except for the first condition. Using exhibit A-9 he stated that another condition of approval they would be in favor of is that the proposed house would be 150 ft. from the front property line. He drew a star showing where the 150 ft. would be measured from. They also accept a condition that a driveway would be designed so the vehicles could turn around so no one would be backing out onto Victoria Lane. He believes the requested variances

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are minor. They have sent buy/sell letters to all adjoining properties. He reminded the board that he advised the applicant to rent a commercial space for his business in May 2017 and he has.

Solicitor Marcolongo reminded the board the applicant is requesting minor subdivision approval along with several variances. The variances needed on lot 14.02 are for lot frontage and lot width. Lot 6.13 requires variances for lot area, building coverage and impervious coverage. He also reviewed the criteria needed to grant the variances.

The board members gave their findings of fact.

MR. RIORDAN – The applicants are requesting minor subdivision approval to create one new lot and variances at 32 Victoria Lane and 1016 Route US 9 South. The applicant is represented by Jules Korschak, Esquire. Mr. Korschak has indicated the applicants are willing to comply with the deed restrictions of the Victorian Lane subdivision and the future home on the lot would be constructed 150 ft. from the southern property line. There was expert testimony by Joseph Maffei, Professional Engineer. The pre-existing non-conforming conditions on lot 6.13 would be lessened by this application. The lot area on this lot would increase from 23,555 sq. ft. to 24,173. The lot depth would go from 123.6' to 123.41'. Mr. Maffei testified that approximately 70% of the neighborhood is smaller in size than the subject lots. The new residential lot in a residential neighborhood would be larger than the majority of lots in the neighborhood and could be granted without detriment to the public good. In 1987 the board approved a 54 ft. lot frontage on adjoining lot 12.02 which is similar to the proposed lot. After that the township approved an increase in the lot frontage to 140' to reduce density. Stephen Hartsough testified that he plans to build a new home on lot 14.02. Clement Lisitski, Esquire, represented George and Eileen Marinakis, who are opposed to the application. Mr. Lisitski stated there is no public benefit by creating this new lot. There was expert comment by James Chadwick, Registered Architect and Professional Engineer. Mr. Chadwick is concerned about the proposed 54' lot frontage since it is substantially less than the required 140' and believes the frontage is manufactured and detrimental to current zoning and the neighborhood. There was expert testimony by William Crane, Professional Planner who stated the proposed 54' frontage is substantially less than municipal land use requirements and that in all his years of experience he has never seen a proposed lot with only 54' of lot frontage. Mr. Crane feels the board cannot grant a hardship variance in this case since it is not an exceptional situation and could not be granted without substantial detriment to the community. Eileen Maranacus is concerned about creating a new lot that would violate the original deed. George Maranacus is concerned about making a non-conforming lot from an already grandfathered non-conforming lot. Additional public concerns regarded safety, parking, additional traffic in the cul-de-sac, another driveway in the cul-de-sac and additional development. Four members of the public were in favor of the application. Mrs. Costello and Robert Young stepped down during this application due to a conflict. He read Section 27-7 of the NJ Zoning and Land Use Administration which indicates that burden of proof rests upon the applicant and that the applicant must always show that relief can be granted without detriment to the public welfare and without impairing the zone plan and zoning ordinance. He does not believe that the evidence submitted meets that criteria.

COMMITTEEMAN YOUNG – He concurs. He finds this is a completed subdivision. In this case the applicant is proposing an entry way off a completed cul-de-sac to gain access to a piece of property that is not attached to the Victoria subdivision. He finds the positive and negative criteria have not been shown and that this is a self-created hardship by the applicants. He finds that only the applicants would benefit from the subdivision. He believes the applicants should consider a driveway onto Route 9. He finds the cul-de-sac is already congested and that any

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additional lots would make it more congested. Any approvals granted run with the land and not the individuals involved, therefore there is no guarantee this is a retirement home or that there would only be two cars coming out of there. The applicant could sell the property and there could be five or ten cars coming out. There is no control factor. He does not find the applicant has met the burden of proof and that the positives do not outweigh the negatives.

MR. HARNEY – He finds part of the problem with the application is that there are flag lots in the township. The township has recently done away with flag lots in the ordinance. He understands there are safety issues but feels it is a benefit for the township to develop a piece of land if the lot were developed smartly and with the right conditions. The applicant has committed to the conditions in the deed restrictions. If the property is not developed it would continue to sit as a two acre lot with one house sitting close to Route 9. He is not in favor of arunning a road from Route 9 to the back of the property. He finds there are hardships as indicated by Mr. Maffei. He finds benefits in developing a lot if it is done right and done by a neighbor they have known for years and meets the standards.

MR. KINGSTON – He does not find an additional driveway on a street is grounds to deny an application. He does not find the creation of another driveway on Victoria Lane is a safety hazard. He stated that manufactured driveway has no real meaning or implication. There were four members of the public that spoke in favor of the application. The lots would be less in compliance if a driveway were constructed to Route 9. He finds that some of the neighbors are in favor of an additional lot if the driveway access was off Route 9. He does not see how a driveway on Route 9 would be better for the neighborhood or for zoning. The applicant has agreed to comply with the original deed restrictions. There is no evidence that property values would decrease. The proposed side yard setbacks is 25 ft. the same as the neighbor on lot 12.02, therefore he does not feel there is a hardship to the neighbor. The applicant has also agreed to construct the house back on the lot so that it is further back than the house on lot 12.02. The new lot would meet the lot area requirement and is larger than most of the lots in the neighborhood. He feels the current lot is underutilized. The proposed lot is appropriate and similar use to the use in the neighborhood, a residential use in a residential neighborhood. He does not believe that granting the variances would be a detriment to the community.

MR. ZEHNER – He disagrees that someone would come out of their driveway at 14mph. He has been to the site several times and does not see vehicles parked on the side of the road or any children. He does not believe an additional driveway would cause safety concerns or issues with trash pickup or emergency vehicles.

MAYOR PALOMBO – He finds that leaf pickup and trash pickup are the township's responsibility and fire and safety are addressed by the fire company. He is not convinced that the proposed subdivision would be a problem or that the property values would be decreased. The applicant has agreed to follow the criteria of what made Victoria Lane a great place to live.

MR. KELLY – He finds there are many facts that must be taken into consideration by both sides as required in the MLUL. He also finds that lot 12.02 was not part of the original subdivision and was created through a variance. The applicant has agreed to many conditions. He believes the purpose of zoning has been met as well as the burden of proof.

A motion was made by Mr. Harney and seconded by Mr. Kingston, to grant the application for minor subdivision approval and variances with the conditions that the plan is revised to show landscaping and fencing on the north property line will extend as far as the new home that will be at least 150 ft., the applicant will comply with the deed restrictions of the Victoria Lane development that were set forth in Exhibit 0-3 except for obtaining approval of a company that is no longer in existence, the new driveway will be developed with a k turn area that will be shown

On the revised plan. In favor: Harney, Kingston, Zehner, Mayor Palombo, Chairman Kelly.  
Opposed: Riordan, Committeeman Young.

**RESOLUTIONS**

1. TUCKAHOE D & G LLC – BLOCK 348 LOTS 94.15 & 94.16 – PB0 9-17
2. MARK & DONNA CREGO – BLOCK 566 LOT 34 – PB 05-17
3. RONALD & JEAN VOORHIS – BLOCK 575 LOT 31 AND BLOCK 576 LOT 10 – SD 03-17

A motion to adopt the resolutions was made by Mr. Harney, seconded by Mr. Kingston, and approved.

**BILLS**

A motion to approve the bills was made by Mr. Harney, seconded by Mr. Riordan, and approved.

**ANNOUNCEMENTS**

Chairman Kelly announced that Solicitor Marcolongo will be accepting a position as Cape May County Surrogate and will no longer be able to act as the Board Solicitor.

Mr. Dietrich stated the township has been working with the DEP on a ROSI, an inventory of dedicated recreation and open space areas within a township. These lots are only identified when receiving direct funding from the DEP. The township received funding in the 1980's for Caldwell Park and the play area on Golden Oak Lane. All the items listed except property 4 are on the existing ROSI.

A motion to authorize Mr. Kelly to sign the form to add the one property onto the 1982 ROSI list was made by Mr. Riordan, seconded by Mr. Harney, and approved.

**PUBLIC PORTION**

Hearing no comment the meeting was closed to the public.

**ADJOURNMENT**

A motion to adjourn the meeting was made by Mr. Harney and seconded by Mr. Young. The meeting was adjourned at 11:26 p.m.

Submitted by,

Shelley Lea  
Board Secretary