

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
DECEMBER 8, 2011**

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

**SUNSHINE ANNOUNCEMENT**

**SALUTE TO THE FLAG**

**ROLL CALL**

Present: Ted Klepac, Jeffrey Pierson, Matthew Unsworth, Lynn Petrozza, Hobart Young, Edward Barr, Chairman Paul Casaccio.

Absent: Christopher Phifer, Andrew Shawl, and Joseph Healy.

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

**TABLED APPLICATIONS**

Due to the number of Board members present the applicant has requested to table this application until January 12, 2012. No further notice is required.

1. T & R HOLDINGS, LLC – BLOCK 348, LOT 1.01

**APPLICATIONS**

1. MICHAEL & ELIZABETH CLIFFORD – BLOCK 841, LOTS 15 & 16 – BA20-11

Application is for a use variance to permit the construction of a new two-family dwelling to replace an existing three units along with variances for front, rear and side yard setbacks, building coverage, number of parking spaces and number of driveway openings at 200 and 204 Bayview Drive, Strathmere.

Julius N. Kenschak, Esquire, represented the applicant. The property is located on the corner of Bayview Avenue and Webster Avenue. There is currently a duplex on the property and a single-family dwelling. The building encroaches into Webster Avenue and does not meet any of the bulk requirements. This is a very old property. The previous owner built a bulkhead and filled up to the bulkhead without permits. The

applicants have obtained a CAFRA permit, which was marked as A-1. The permit is dated July 29, 2011 and permits the demolition of the three units, the construction of a new duplex, reducing the density from three units to two units. A condition of the approval is that the existing bulkhead is removed and the fill be excavated. Robert Bruce prepared a septic plan and a copy of a letter approving the plan from the Cape May County Department of Health dated June 16, 2011 that was marked as A-2.

Robert Bachich, Registered Architect and Principal of Bachich Associates, was sworn in. He prepared the plan dated 3/11/11 and revised 9/7/11 and 9/26/11. The lot exceeds the lot area requirement. There is currently one unit on lot 15 and two units on lot 16. There is no off street parking available. Neither of the units meets the setback requirements. The building currently overhangs into Webster Avenue by 3 ½ inches. The septic is in the rear of the property and special approval was given to have the tanks below the building.

Mr. Bachich testified that a use variance is needed to allow 2 units, which would reduce the density. He reviewed the requested bulk variances. Removing the fill will reduce the amount of useable property. The building is being moved back at least 5 ft. The stairs on the side of the building are in the right of way of Webster Avenue. Parking and storage are proposed under the structure. Bedrooms will be located on the second floor and living area on the third floor. Decks have been located in the rear of the property since there is no room in the front. He believes the proposed setbacks are similar with the older homes in the area. There are other duplexes in the area.

Mr. Bachich testified the existing structures do not meet code or FEMA. The new building would meet all fire safety and FEMA regulations. The aesthetics would be improved. He believes there are several special reasons for granting the variances. He believes the Board can grant the relief without detriment to the public good and without impairing the intent and purpose of the zoning plan since the lot is oversized. He believes that removing the bulkhead and fill would be a hardship. He believes that permitting these deviations from the ordinance would outweigh any detriment.

Michael Clifford, owner of the property, was sworn. There is a total of 4 bedrooms (2 in each unit) being proposed where there are currently 8 or 9 bedrooms.

Mr. Dietrich requested that the applicant notify the Township prior to doing any work on the bulkhead. The tiebacks would be located in the Township right of way. The applicant will have to relocate the fence and possibly move some of the playground equipment since the bulkhead will be moved back 41 ft from its currently location. due to the proposed location of the bulkhead. The chain link fence along the bulkhead would have to be replaced and the area mulched. Since the applicant has to move their bulkhead back 41 ft back it will leave the side of the playground exposed. This would serve as a Municipal bulkhead since it would be holding up the embankment or soil of the Township playground. He suggests that prior to Certificate of Occupancy the applicant must have the area restored and inspected by his office.

Mr. Dietrich testified that the stairs are currently 2 ft into Webster Avenue and the house is 2/10 of a foot in the right of way. The improvements include removing the house and stairs from the right of way.

Mr. Bachich discussed the proposed drainage. Mr. Dietrich recommended that the gutters be directed to the rear of the building and not toward the street. Mr. Bachich agreed to add a note on the plan regarding the gutters.

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

MR. UNSWORTH – Michael and Elizabeth Clifford are the owners of Block 841, Lots 15 and 16, located at 200 and 204 Bayview Avenue in Strathmere. The applicants are requesting a use variance to construct a new two family home to replace an existing three units and variances for front, rear and side yard setbacks, building coverage, number of parking spaces and number of driveway openings. He finds the proposed construction would provide significant improvements to the site. A new septic will be installed. The applicant has received CAFRA approval. There are currently three dwelling units with 8 or 9 bedrooms that will be reduced to two dwelling units with two bedrooms each. Additional parking will be created although the number of spaces will not meet code. The non-conforming setbacks would be improved. The encroachments into the right of way will be corrected. The proposed setbacks would conform to the neighborhood. The lot is unique since the property owners are being required by DEP to remove the existing bulkhead and lose almost half of the lot area greatly reducing the building area on the lot and requiring creative engineering to locate the septic and the dwelling on the property. The proposed construction will improve the visual appearance of the property, building code and FEMA codes. The applicant has agreed to consolidate the lots into one lot and to restore the playground. Gutters will be installed and will drain to the rear of the dwelling. There was no public comment. He would be in favor of the application as presented with conditions.

MR. PIERSON – He finds that under C2 40:55D-2 they have met the standards for (b) and (c) and 40:55D-1, (4). He believes the application can be granted without substantial detriment to the public good and will not impair the intent and purpose of the zoning plan and zoning ordinance. He would be in favor of granting the application.

MR. KLEPAC – Jules Korschak represented the applicant. The improvements would benefit the property and the area. He concurs.

MS. PETROZZA – She concurs. She finds this will be an improvement from what currently exists on the lot. She is in favor.

MR. BARR – He concurs. The new home would improve the area.

MR. YOUNG – He concurs. There is currently a duplex and a single-family home on the lots.

MR. CASACCIO – The proposed dwelling would be compatible with the neighborhood since there are mixed uses.

A motion was made by Mr. Pierson and seconded by Mr. Klepac, to grant the use variance and requested bulk variances to construct a duplex on the site with the conditions that the applicant provide a deed of consolidation to the satisfaction of the board solicitor, the applicant provide notice to the Township prior to the construction of the bulkhead and that no certificate of occupancy will be issued until the engineer inspects and approves the restoration of the playground and that the plans be revised to evidence gutters on the property with the downspouts and run off directly to the bay. In favor: Klepac, Pierson, Unsworth, Petrozza, Young, Barr, Casaccio.

2. NORMA BECKER PROCACCINO – BLOCK 857, LOT 9 – BA25-11

Applicant is requesting variances for front yard setback, rear yard setback, side yard setback, principal building coverage, accessory building coverage and impermeable surface for renovations to an existing single-family dwelling at 204 N. Neptune Avenue, Strathmere.

Arthur T. Ford, Esquire, represented the applicant.

Robert Bachich, Registered Architect, from Bachich Associates, was previously sworn. Mr. Bachich oversaw the preparation of the plans dated 10-11-11 and revised 11-14-11. He reviewed the photos that were included in the application.

Mr. Bachich testified that the out building in the rear of the property that is used as a sleeping area would be removed from the site. He reviewed each of the existing and proposed setbacks. Both of the side yard setbacks would be make more conforming. The house will include an elevator. The building coverage would be reduced from 42.99 percent to 28.73 percent, where 27 percent is permitted. The impermeable surface coverage would be reduced from 56.65 percent to 47.64 percent, where 45 percent is permitted. The building height will be in compliance with the ordinance. Two parking spaces will be provided under the structure.

Solicitor Marcolongo stated that the submitted application indicates that the proposed impermeable surface coverage is 52.07 percent and the zoning schedule on the plan shows 47.64 percent. Mr. Ford stated that the zoning schedule is correct. The zoning schedule also indicates the curb cut will remain 24.83 wide, however the submitted map shows a 12 ft curb cut. Mr. Bachich stated this was an error and the curb cut would be reduced to 12 ft.

Mr. Dietrich stated that curbing and sidewalks would be installed as part of the project. There is no parking in front of the property since the street is so narrow. Mr. Ford stated that the Google map shows there are no curbs or sidewalks on Neptune Road to connect to. Two photos on one sheet of paper was marked as A-1. The photos prove there are no curb or sidewalk on Neptune Road.

Mr. Bachich testified the proposed renovations would not be a detriment to the neighborhood and would not interfere with the light, air and open space. The non-conformities on site would be made less intense. The building would meet FEMA requirements and brought up to code. The elevator would allow access for those that cannot use the stairs. He believes the proposed building would be compatible to the surrounding area. He feels that granting the variances would not have a detrimental effect on the zoning plan or zoning ordinance since they have reduced the non-conforming issues. The number of bedrooms will be reduced from 5 to 3, which would be better for the septic and the environment.

The meeting was open to the public.

Nathalie Neiss, Route 50, Petersburg, New Jersey, was sworn. Ms. Neiss had questions regarding curb and sidewalk. She is in favor of creating an escrow account in case curb and sidewalk are ever needed. She does not want sidewalks or curbs in the area since there currently are none and she feels it could be a safety hazard.

Norma Becker Procaccino, owner of the property, was sworn. Mrs. Procaccino testified that she loves the area and the quietness of the street. The fact that there are no curb or sidewalk makes the property appealing. She is not in favor of placing concrete in front of the property where there is no parking. She feels as though it would be like building a bridge to nowhere. She would be in favor of placing funds into an escrow account in the event that curb and sidewalk are ever needed.

Mr. Dietrich stated that the structure as proposed is not at flood elevation plus one as required in the New Jersey building code. If the finish floor were at elevation 10 he does not believe the applicant would get the highest rating for flood insurance. FEMA will require that the structure meet the current code. Mr. Bachich agreed and stated the slope of the roof could be changed if needed.

Hearing no further response the meeting returned to the Board for findings of fact.

MR. UNSWORTH – Norma Becker Procaccino of Philadelphia Pa, is the owner of Block 857, Lot 9 located at 204 North Neptune Avenue in Strathmere. Mrs. Procaccino is requesting bulk variances to renovate an existing structure. The proposed renovations would improve some of the setbacks and coverage on the property. Decking and stairways will be removed to improve the side yard setbacks although they will not be conforming. The building coverage and impervious coverage will be reduced. The existing non-conforming outbuilding would be removed. The structure would meet building code requirements. The applicant proposes a 12 ft wide curb cut where there currently is none. The applicant has agreed to place funds into an escrow account in case curbs and sidewalks are ever needed. There was public comment outside of 200 ft. The Board Engineer commented on the proposed building elevation and flood requirement. He is in favor of the application.

MR. PIERSON – He believes the application can be granted in accordance with 40:55D-2 (b) and (c). The side yard setback is justified since the lot is narrow. The applicant is trying to bring the property into compliance with the zoning ordinance. He believes the application can be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zoning ordinance or zoning plan.

MR. KLEPAC – He concurs. Mr. Ford represented the applicant.

MS. PETROZZA – He concurs.

MR. BARR – He concurs.

MR. YOUNG – He concurs.

MR. CASACCIO – He concurs. He incorporates the testimony of the professionals as his findings.

A motion was made by Mr. Klepac and seconded by Mr. Unsworth, to grant the requested variances to renovate the existing single-family dwelling with the condition the applicant confirm the impervious coverage and revise the plan accordingly with the maximum coverage being 52.07 percent, the outside dimensions of the structure will not change, the zoning schedule will be revised to evidence that the curb cut will be 12 ft wide, the plan will be revised to remove the waiver of curbing and sidewalk, the outbuilding will be removed prior to the issuance of a Certificate of Occupancy, the applicant shall deposit an escrow amount in the amount set by the Board Engineer for future development of curb and sidewalk on the site prior to the issuance of a building permit and the standard conditions. In favor: Klepac, Unsworth, Pierson, Petrozza, Young, Barr and Casaccio.

## **RESOLUTIONS**

### 1. WILLIAM & BRIDGET BAILEY – BLOCK 456, LOT 20 – BA21-11

A motion to adopt the Resolution was made by Mr. Pierson and seconded by Mr. Klepac. In favor: Klepac, Pierson, Unsworth, Young, Barr and Casaccio. Abstain: Petrozza.

### 2. BRETT PALMER – BLOCK 455, LOT 9.02 – BA24-11

A motion to adopt the Resolution was made by Mr. Unsworth and seconded by Mr. Pierson. In favor: Klepac, Petrozza, Young, Abstain: Pierson, Unsworth, Barr and Casaccio.

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

A motion to adopt the Resolution was made by Mr. Unsworth and seconded by Mr. Klepac. In favor: Klepac, Petrozza, Young, Abstain: Pierson, Unsworth, Barr and Casaccio.

## **BILLS**

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

**EXECUTIVE SESSION**

A motion to go into Closed Session to discuss pending litigation was made by Mr. Pierson, seconded by Ms. Petrozza, and approved. The Board went off the record at 8:55 p.m. and returned at 9:31 p.m. Chairman Casaccio did not participate in the Closed Session discussion.

Based upon the Boards discussions during closed session a motion was made by Mr. Pierson and seconded by Ms. Petrozza to dismiss the appeal in the matter of Ginn vs. Zoning Board of Adjustment. In favor: Klepac, Pierson, Unsworth, Petrozza, Barr. Abstain: Young.

**ADJOURNMENT**

A motion to adjourn the meeting was made by Mr. Pierson, seconded by Ms. Petrozza, and approved. The meeting was adjourned at 9.34 p.m.

Submitted by,

Shelley Lea