

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
ANNUAL RE-ORGANIZATION MEETING MINUTES
JANUARY 13, 2011**

The annual Re-organization 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: Ted Klepac, Christopher Phifer, Jeffrey Pierson, Andrew Shawl, Lynn Petrozza (7:33 p.m.), Peter Schuler, Vice Chairman Matthew Unsworth (7:40 p.m.) and Chairman Paul Casaccio.

Absent: Joseph Healy.

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

RE-ORGANIZATION

A motion was made by Mr. Klepac and seconded by Mr. Pierson, to nominate Paul Casaccio as Board Chair. A motion was made by Mr. Klepac to close the nominations. In favor: Klepac, Phifer, Pierson, Shawl, Petrozza, Schuler.

PAUL CASACCIO ELECTED CHAIRMAN FOR 2011

A motion was made by Mr. Klepac and seconded by Mr. Pierson, to nominate Matthew Unsworth as Vice Chair. Mr. Klepac made a motion to close the nominations. In favor: Klepac, Phifer, Pierson, Shawl, Petrozza, Schuler, Casaccio.

MATTHEW UNSWORTH ELECTED VICE CHAIRMAN FOR 2011

A motion was made by Mr. Klepac and seconded by Mr. Pierson to elect Dean Marcolongo as Board Solicitor. Mr. Shawl made a motion to close the nominations. In favor: Klepac, Phifer, Pierson, Shawl, Petrozza, Schuler, Casaccio.

DEAN MARCOLONGO ELECTED BOARD SOLICITOR 2011

A motion was made by Mr. Shawl and seconded by Mr. Schuler to nominate Paul Dietrich as Board Engineer. Mr. Shawl made a motion to close the nominations. In favor: Klepac, Phifer, Pierson, Shawl, Unsworth, Petrozza, Schuler, Casaccio.

PAUL DIETRICH ELECTED BOARD ENGINEER FOR 2011

A motion was made by Mr. Klepac and seconded by Mr. Shawl to nominate Shelley Lea as Board Secretary. Mr. Klepac made a motion to close the nominations. In favor: Klepac, Phifer, Pierson, Shawl, Unsworth, Petrozza, Schuler, Casaccio.

SHELLEY LEA ELECTED BOARD SOLICITOR FOR 2011

OFFICIAL NEWSPAPER

A motion was made by Mr. Shawl and seconded by Mr. Schuler to utilize The Press and Ocean City Sentinel Ledger as the official newspaper. In favor: Klepac, Phifer, Pierson, Shawl, Schuler, Unsworth, Petrozza, Casaccio.

APPROVAL OF THE DECEMBER 9, 2010 MEETING MINUTES

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

APPLICATIONS

1. **FREDERICK BECKER AND DUTCH & JOAN HUBER – BLOCK 568, LOTS 10.03 & 2.04 – BA01-10**

Applicants are requesting a minor subdivision to realign the existing lot lines to eliminate existing encroachments and a use variance for expansion of a non-conforming use (existing house in the CM2 zone) at 50 Butter Road and 4 Wyndom Way in Palermo.

Michael Stanton, Esquire, represented the applicants. Mr. Stanton stated that this is a joint application between the adjoining property owners to reconfigure the lot lines. He stated that the Becker's gazebo and a portion of their pool encroach onto lot 2.04 owned by the Huber's. Both lots exceed the lot area requirement of 40,000 sq ft. Lot 2.04 would be reduced from 4.02 acres to 3.63 acres and lot 10.03 would be increased from 2.30 acres to 2.68 acres. A use variance is needed since lot 2.04 contains a single-family dwelling and is located in the CM2 zoning district. Moving the boundary lines would remove the encroachments.

James E. Schwab, Professional Land Surveyor, was sworn. Mr. Schwab testified that he prepared the minor subdivision plans dated /10/09 and last revised 12/16/10. The applicants are seeking to reposition the boundary line to remove the non-conforming setbacks and encroachments. It is his opinion that the use variance could be granted without substantial detriment to the public good and without impairing the intent and purpose of the zoning plan and ordinance.

Mr. Dietrich testified that the house on lot 10.03 was constructed to the rear of the lot since there are freshwater wetlands in the front. He does not feel it is necessary to show

the wetlands on this plan. At the time the house and pool were constructed there was not a requirement to have an as built survey. He agreed that both lots are oversized and that the subdivision would help to clean up the encroachments.

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

MR. PIERSON – The applicants are Dutch and Joan Huber owner of lot 2.04 located at 4 Wyndom Way and Frederick Becker owner of lot 10.03 located at 50 Butter Road. The applicants are before the Board for a minor repositioning of the boundary between the two lots to accommodate the location of a gazebo and in-ground swimming pool.

MR. KLEPAC – Michael Stanton, Esquire, is representing the applicant.

MR. SHAWL – The surveyor testified that the proposed changes preserve light, air and open space and will not impair the municipal land use code. There was no comment from the public.

MR. SCHULER – The adjustment would bring the non-conforming setbacks and encroachments into conformity.

MS. PETROZZA – Concurs.

MR. PHIFER – Nothing to add.

MR. CASACCIO – He concurs with the findings of the professionals.

A motion was made by Mr. Pierson and seconded by Mr. Shawl to grant the use variance and minor subdivision with the condition that an electronic copy of the survey is submitted prior to the filing of the plat and the standard conditions. In favor: Klepac, Phifer, Pierson, Shawl, Petrozza, Schuler, Casaccio.

2. WHIPPOORWILL CAMPGROUND – BLOCK 616, LOT 4 – BA18-10

Application is for a use variance and site plan waiver to construct a snack bar near the existing pool area at 810 South Shore Road, Palermo.

Mr. Unsworth joined the Board at this time.

Julius Korschak, Esquire, represented the applicant. Mr. Korschak stated this is a pre-existing non-conforming use on a large property located in the residential zone. The applicants propose a snack bar facility near the pool. He submitted 5 resolutions dating back to 1998. These resolutions were marked as Exhibits A-1 through A-5.

Joseph Maffei, Professional Engineer, was sworn. Thomas Swenk, 825 Stagecoach Road, was sworn. Paul Dietrich and Shelley Lea were also sworn in at this time.

Mr. Maffei testified using the site plan he prepared dated 11/09/10 and last revised 12/28/10. No clearing is needed and there are no changes to the drainage. Except for the grease trap the Cape May County Health Department required no other upgrades. Mr. Maffei testified that the grease trap would be a benefit to the site and the campers. The

snack bar is intended for the residents of the campground. He feels there is no detriment to the public good since this is an existing recreational facility. He believes the variance can be granted without detriment to the zone plan and ordinance.

Mr. Swenk testified there is an existing snack inside the office. His intention is to move it closer to the pool so that it is more convenient. There is already an eating area with picnic tables next to the pool. There is currently a barbeque grill in the location of the proposed snack bar, however the Health Department has commented in the past that more formal cooking and serving is needed for the safety of the public.

Mr. Dietrich agreed with Mr. Maffei that the application meets the requirements for a site plan waiver.

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

MR. SHAWL – The applicant Whippoorwill Campground LLC is before the Board to gain approval for a proposed snack bar at the existing pool facility inside the campground. Mr. Maffei has testified the snack bar would preserve light, air and open space and would not harm the intent of the zone plan. The snack bar would have no effect on parking, drainage, lighting or circulation. Granting the variance would not be a detriment to the public good. The application meets the requirements of a site plan waiver. There was no public comment.

MR. SCHULER – The snack bar would improve public safety.

MS. PETROZZA – She concurs.

MR. UNSWORTH – He concurs.

MR. PIERSON – He concurs.

MR. PHIFER – He concurs.

MR. CASACCIO – He concurs.

A motion was made by Mr. Pierson and seconded by Mr. Klepac to grant amended preliminary and final site plan approval, waiver of site plan requirements and a use variance for expansion of a non-conforming use with the standard conditions. In favor: Klepac, Phifer, Pierson, Shawl, Unsworth, Schuler, Casaccio.

3. CAESAR & GERALDINE CAIAFFA – BLOCK 648, LOT 3 – BA16-10

Continuation of an application requesting a variance to allow a 6 ft high fence in the front yard where 4 ft is permitted at 331 W. Quail Drive in Marmora.

Diana Caiaffa, Esquire, represented the applicants. The applicants would like to maintain the 6 ft high fence that is on the side of their home located on the corner of Dove and Quail.

Caesar and Geraldine Caiaffa, 331 W. Quail Drive, Marmora, were sworn in along with Lucas Melillo, Lukes Landscaping, 6 Preswyk Lane, Seaville.

Mr. Caiaffa testified that he installed the original fence himself with the help of his wife and daughters in 1984/1985. He has never had a complaint about the fence until recently. About 3 years ago Luke's Landscaping removed the fence links and replaced them with new and kept the original fence posts.

Mr. Caiaffa testified there are other 6 ft high fences in the development. He believes there is approximately one car length from the sidewalk to the fence. He did not obtain a permit when he originally installed the fence. The shed that is shown on the submitted survey dated 12/29/09 has been removed.

Ms. Caiaffa testified that the neighbor had complained about the fence and that is why they are before the Board. The Zoning Officer sent a Notice of Violation for the height of the fence. She stated that the fence is not located in the site triangle. She reviewed the submitted photographs showing other 6 ft high fences in the area.

Mr. Dietrich referred to photos 1036 and 1038. He stated that although there is low shrubbery there is still a site triangle view.

Mr. Melillo testified that in 2008 he replaced the fence sections since the bottom was rotten. The posts were in good shape. This is a board on board fence meaning the fence looks the same from both side. The fence is very nice and aesthetic. The fence is located 15 to 20 ft from the road. In his professional opinion the fence does not block the neighbors view.

The meeting was open to the public.

Francesco Buto, 202 Dove Lane, Marmora, was sworn. Mr. Buto testified the fence encroached on his property about 7 inches when he purchased the house in 2005. The fence was nailed to a tree on his property. In 2008 while in North Carolina he received a call from his wife saying that Luke's Landscaping was taking the fence and the posts out. He described his phone conversation with Mr. Melillo. He stated the applicant's home is different than the rest of the development since it sits on an angle and has 2 front yards. There have been several near misses with someone walking on the sidewalk. He submitted a picture showing the nail still in the tree. He questioned saving the posts if the fence is 27 years old. He stated that the fence is now on the property line and the portion of fence that encroached onto his lot has been moved onto the applicant's lot. He submitted photos that were marked P-1 through P-6.

Mr. Buto stated that he has to go to the end of the driveway to see if anything is coming when he backs out of his driveway. He has concerns that he will not see kids on their bikes or people walking on the sidewalk when he is approaching the fence. He never

complained about the fence since he was able to see before. He is not able to see now that an 8 ft section has been added making the fence closer to the road than before.

Mr. Dietrich stated that the fence is located 20 ft from the road and 12 ft from the sidewalk. The survey from 1991 shows that the fence was 14 or 15 ft from the property line and it is 12 ft now. The fence is 2 to 3 ft closer to Dove Lane and is not in the exact spot as it was previously. The survey was marked P-7.

Marie Buto, 202 Dove Lane, Marmora, was sworn. Mrs. Buto objects to the application. She drives a big SUV and has to move past the sidewalk to see what is coming down the road. She stated this is a dangerous situation that did not exist before. She watched the landscapers dig and install new posts. Comcast wanted to dig her front yard since lines were severed. This would not have happened if the proper permits were obtained.

Tim Mc Laughlin, 330 W. Quail Drive, Marmora, was sworn. He has lived in the neighborhood since 2000. He agrees with the applicant that there are several fences that are 6 ft high in the front yard. He stated there is no way that an 8 ft section was added to the fence. He doesn't believe the fence is a hazard. Using the exhibits he identified the properties with 6 ft high fences.

Mr. Buto agreed there are a lot of other 6 ft high fences in the neighborhood but none of them abut a driveway. He feels this is a unique situation.

Mr. Melillo testified that the fence posts were there, however he may have adjusted one or two of them. He stated that the fence was literally leaning onto the Buto's property.

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

MR. SHAWL – Caesar and Geraldine Caiaffa are before the Board requesting a variance to allow a 6 ft high fence in the front yard. The property is located on the corner of W. Quail Drive and Dove Lane and is known as Block 648, Lot 3. The applicant testified that in 2008 he replaced an existing wood fence and did not replace the posts, however later testimony was that some of the posts were adjusted. The fence is 6 ft high board on board that is designed to blend in with the landscaping. The original fence was constructed in 1984/1985. The shed shown on the survey from 2009 has been removed. There are many 6 ft high fences in the neighborhood. There is 15 to 20 ft between the street and fence. The applicant does not believe the fence blocks the neighbors view nor was it their intent to do that. This is a corner lot with 2 front yards and the house is located on an angle. The fence is in keeping with the character of the neighborhood. The adjoining property owners testified that the fence was on their property but the fence was moved off their property. The neighbors have testified that the fence blocks their view when exiting their property. A survey from 1991 shows the fence on the neighbors property and the survey from 2009 does not. There are mature trees between the fence and the sidewalk. Another neighbor within 200 ft has testified there are numerous 6 ft

high fences and that this particular fence does not detract from the quality or character of the neighborhood. The location of the property presents a hardship and granting a variance would allow a 6 ft high fence in this location. The Buto's have testified that the site line is reduced.

MR. SCHULER – He concurs.

MS. PETROZZA – She concurs.

MR. PHIFER – He does not believe the applicant has proved a hardship. He does not believe that benefits in granting the variance would outweigh any detriments.

MR. UNSWORTH – The applicant would be entitled to a 4 ft high fence anywhere in their front yard up to the property line. The Township Engineer has testified that the residential site requirement allows vegetation 2 ft or lower 10 ft from the cartway. The fence is approximately 20 ft from the cartway. He believes the unique shape of the lot creates a hardship. He is in favor of the application.

MR. PIERSON – Mr. Buto agreed there is sufficient room to do k-turns so that they are not required to back out of the driveway. The fence was moved from the neighbors property and installed on the property line. A neighbor confirmed that there was very little change to the fence and that an additional 8 ft was not added. He believes the variance could be granted without substantial detriment to the public good and would not substantially impair the intent or purpose of the zoning plan or ordinance.

MR. KLEPAC – He has concerns about safety. He concurs with the findings.

A motion was made by Mr. Pierson and seconded by Mr. Unsworth to grant the variance to allow a 6 ft high fence in the front yard. In favor: Pierson, Unsworth, Casaccio. Opposed: Klepac, Phifer, Shawl, Schuler. Application Denied.

RESOLUTIONS

1. SP 01-11 – MEETING SCHEDULE FOR 2011

A motion was made by Mr. Unsworth and seconded by Mr. Pierson to adopt the Resolution. In favor: Klepac, Phifer, Pierson, Shawl, Unsworth, Schuler, Casaccio.

2. SP 02-11 – CONTRACT WITH DEAN MARCOLONGO FOR PROFESIONAL SERVICES

A motion was made by Mr. Unsworth and seconded by Mr. Phifer to adopt the Resolution. In favor: Klepac, Phifer, Pierson, Shawl, Unsworth, Schuler, Casaccio.

BILLS

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

CLOSED SESSION

UPPER TOWNSHIP ZONING BOARD

JANUARY 13, 2011

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A motion was made by Mr. Phifer and seconded by Mr. Unsworth to go into closed session to discuss pending litigation. The Board entered into closed session at 9:33 pm and returned to the record at 9:39 p.m.

Submitted by,

Shelley Lea