

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
NOVEMBER 10, 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: Ted Klepac, Christopher Phifer, Andrew Shawl, Lynn Petrozza, Hobart Young, Edward Barr, Matthew Unsworth and Jeffrey Pierson.

Absent: Joseph Healy and Paul Casaccio.

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

APPROVAL OF THE OCTOBER 13, 2011 AND OCTOBER 25, 2011 MEETING MINUTES

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

TABLED APPLICATIONS

The following application has been tabled at the applicant's request and will be scheduled for the special meeting on November 15, 2011. The applicant has agreed to waive the tolling of time in which the Board has to act on this application.

1. BRETT PALMER – BLOCK 455, LOT 9 – BA24-11

APPLICATIONS

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

Continuation of an application for amended preliminary and final 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 for providing storm water

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calculations and asphalt parking area, to renovate an existing tri-plex at 2 Meadowview Lane, Tuckahoe.

Mr. Unsworth and Mr. Klepac have listened to the recording of the October 2011 meeting and have signed certifications. Mr. Unsworth turned the meeting over to Mr. Pierson who continued to act as Chair during this application.

Joseph Maffei, Professional Engineer and Planner and Raymond Leps, 1150 Route 50, Petersburg, NJ, were sworn.

John Scott Abbott, representing Robert Breunig, objected to Mr. Klepac sitting on this application. Solicitor Marcolongo stated that Mr. Breunig indicated to him that Mr. Klepac had a conflict with this application. His concerns were a result of Mr. Klepac stepping down on the application for a natural gas compressor on Mr. Breunig's property. Solicitor Marcolongo stated that Mr. Klepac had a conflict with that specific site and does not believe that Mr. Klepac had any type of bias with regard to Mr. Breunig. It is his opinion that Mr. Klepac does not have a conflict with this application since he has no bias. The Municipal Land Use Law and Cox discuss a number of conflicts that result in someone stepping down. He does not believe that Mr. Klepac has a conflict with the T & R Holdings application and Mr. Breunig as an objector.

Chairman Pierson asked Mr. Klepac to state the reason why he stepped down during the hearing for the natural gas compressor. Mr. Klepac responded that Mr. Abbott requested that he step down and he honored his request. He does not believe that a conflict existed and he has no personal conflict or bias with Mr. Breunig.

Kristopher Facenda, Esquire, representing the applicant, stated that Mr. Klepac is an upstanding member of the Board. Although he appreciates Mr. Marcolongo analysis regarding Mr. Klepac he does not want to subject his clients to an issue regarding conflict. His objective is to minimize the risk of litigation if it creates a risk to his client.

Robert Breunig stated that Mr. Marcolongo informed him that he asked Mr. Klepac to step down during the natural gas compressor application due to his bias in reference to him and his application.

Solicitor Marcolongo stated that the bias was regarding the application and not Mr. Breunig.

A vote was taken and the Board members voted unanimously that Mr. Klepac has no bias in regards to this application.

Mr. Facenda submitted photos of the subject property that Solicitor Marcolongo marked as Exhibits A-10 through A-19. Mr. Leps described each of the photos. Exhibit A-10 is the property just before they purchased the property, A-11 shows the boats tied up to the dock, A-12, A-13 and A-14 show flooding after a storm, A-15 shows the flood line inside

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of the building, A-16 and A-18 show the debris that was pulled out of the river, A-17 shows the deteriorated bulkhead, A-19 shows the newly constructed bulkhead.

Mr. Leps testified that prior to installing the new bulkhead the property flooded often. They had no problems with flooding during the last storm.

Mr. Maffei testified the architectural plans submitted with the application consisted of three sheets. He explained that the first floor elevation would be raised above flood elevation. The submitted elevations show the peak of the roof to be 35 ft above existing grade. He stated they are staying within the existing footprint.

Mr. Abbott stated that his client, Robert Breunig, has an existing single-family home adjacent to this property. He stated that the Board made a determination by Resolution dated January 1995 that this was not a marina.

Mr. Abbott gave his opening statement before cross-examining the applicant and their professionals.

Mr. Leps testified that he purchased the property in December 2008. Mr. Abbott asked if the property was purchased in a bankruptcy and Mr. Leps testified that it was not. He responded that the property was listed as three apartments and a 10-slip marina. The apartments were not occupied when he bought the property since the flooding destroyed the place. A copy of the deed with the bankruptcy approval was marked as Exhibit P-1. Mr. Abbott submitted a copy of a Plan of River Front Lots filed in August 1910 and indicating a public landing area as part of the property was marked P-2. He believes the public landing could be used for fishing and boating. He does not believe that variances should be granted that would take away the public landing. A copy of a Deed made on the 14th day of June 1979 where Philip and Florence Repp sell to John and Elsie Kerner was marked P-3. A copy of a Deed made on April 20, 1990 where John and Elsie Kerner sells lot 1.01 to Glenn and Linda Graiser was marked as P-4. A copy of a Deed made on April 20, 1990 where Charles and Virginia Radl sell lot 1.02 to Glenn and Linda Graiser was marked P-5. A copy of a Quit Claim Deed made in September 2005 where Linda Graiser transfers lot 1.01 to Glenn Graiser was marked P-6.

Mr. Leps testified that he had a title search done prior to purchasing the property. He was not aware of the public land area. He agreed with Mr. Abbott that this is an undersized lot. He made no effort to purchase adjoining property to make the lot larger. His business involves in-board boats. He sells boats but does not rent boats. He owns a commercial marina in Somers Point. He intends to store ten boats on site. The boats would be no larger than 30 ft. He does not believe that entering and exiting Meadowview Lane with a boat trailer is unsafe. He has not considered building a single-family home on this property since he purchased it as three apartments and a marina. He has not obtained any documentation from the Township to confirm the uses on site. He is not aware of any Board decision in regards to a marina on this site. He proposes to construct a new building. The size of the units will be increased. He does not know the current size of the units. The height of the building will be increased and an A-frame roof will be

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added. Five sheets of paper each containing two photographs of the site and Route 50 was marked as P-7.

Mr. Leps stated that the pictures submitted by Mr. Abbott show them in the process of cleaning the property.

James Chadwick, Professional Engineer, was sworn. Mr. Chadwick testified that he took the photos in May 2011.

Two additional photos of the property were marked as P-8 and P-9. During further cross examination Mr. Leps testified that the photo shows the old bulkhead and the area adjacent to the bridge. He has no plans of renting boats or jet skis (pwc) at this site. He proposes to rent the boat slips. He does not know how much he will charge to rent the slips. He does not rent boat slips at his marina in Somers Point. The intent of the store is to sell bait. Fuel will not be sold on site. He does not plan to service boats on this site. He does plan to store boats at this site. He does not know how much he will charge for storing boats on site. Mechanics will not work on the boats on site. People will be able to wash their boats on site. The bottoms of the boats will not be cleaned on site. He sends boats out to have the bottoms cleaned. He proposes to rent the three residential units. He does not know at this time how much he will charge for rent. All three of the units have dens. He agrees the dens are large enough for a bed. He may move into one of the units. He stated that himself and Mr. Schellinger have lived here all their lives and have always admired this property. They bought the property knowing that it would not be moneymaking venture. He testified that boats would get to the site by using a boat ramp in another location.

During cross-examination Mr. Maffei testified that he is very familiar with the property. He does not agree that the proposal violates the Master Plan. He agreed the TR zone does not allow marinas. The proposed height of the new building is 35 ft from existing grade. The building is currently 17 ft above grade at its highest point. The building would be 18 ft higher than it is right now. The required side yard setback is 35 ft. and the proposed setback is 3.4 ft. He does not feel the setback is being exasperated since the building will be no closer to the property line than it already is. He does not believe the additional height would have any effect to the Breunig property since the height of their structure is 34 or 35 ft. The various regulations they have had to go through including CAFRA, Army Corp, Waterfront development and the septic all alluded to the fact that the building would maintain the same footprint. If a single-family home were constructed on this site then all public access would be denied. He stated they have two principal uses on site. The commercial use is required by CAFRA to provide public access to the site as opposed to a single-family home which could deny anyone access to the site. He does not know if they would have to adhere to the public landing.

Mr. Maffei testified the road in front of the property is very narrow. The right of way is 15 ft wide and the paved road is between 12 and 13 ft. He stated that boats are normally taken out of the water in November and December and not during the summer traffic times. He is aware of the new bridge that will be constructed. He does not know if DOT

intends to widen the bridge. He testified the height of the structure would be very similar to the height of Mr. Breunig house. Mr. Breunig house is situated on the far right hand side of his property similar to the subject property. A flat roof could be used, however they feel the A-frame roof is more aesthetic and they can stay within the permitted height. They are not asking for a height variance.

Mr. Abbott submitted four-color photos on one sheet of paper showing Mr. Breunig's property that was marked as P-10. Mr. Maffei does not believe that raising the height of the building would create a shadow on Mr. Breunig's property. Mr. Maffei stated the site has not changed much since they were here in 2009. The revisions they have done were a result of the outside agency approvals and comments requiring adjustments. Some of the revisions were reducing the size of the stone parking area, the bulkhead is not straight and has a slight jog in the center, and the Health Dept approved the septic. In August they submitted to CAFRA for their septic approval, parking spaces and building renovations.

Mr. Maffei testified the only portion of the building that is salvageable is possibly the masonry block section toward Meadowview Lane. If the building were moved they wouldn't get their CAFRA approval since they will not allow you to expand past the existing footprint. The applicant would be entitled to repair the structure as it is today. Their major concern is bringing the building to flood elevation. Currently a portion of the building sits over the water. The new location of bulkhead makes it so that the entire building is upland. He stated that since this is three apartments the septic flow calculations are higher than a 3-bedroom house and closer to a 4-bedroom house. He stated that this lot is larger than the other lots in this area.

Mr. Young stated that since the bridge was constructed in the 1940's or 1950's the public landing shown on the map from 1910 might no longer exist.

Mr. Leps testified they intend to use the grass area on site for storage. Mr. Unsworth feels that storing boats in this area intensifies the use and it is not depicted on the plan.

Mr. Maffei testified that base flood level is 9. He commented that DEP requires that even the storage area needs to be at elevation 10. The main office and storage area would be at elevation 10 with 8 ft ceilings. He believes the roof pitch could be reduced. Six of the parking spaces are for the slips. There is one handicap space. The other spaces are for the apartments.

There was a short break at this time. Upon returning to the record Mr. Abbott called the following individuals:

Fred Akers, Administrator of The Great Egg Harbor Watershed Association and The Great Egg Harbor Scenic and Recreational River Council, residing in Newtonville, New Jersey was sworn. He is present to inform the Board about the history of the wild and scenic river. He submitted a handout of the comprehensive management plan of the Great Egg Harbor River that includes the Tuckahoe Riverfront Zoning from Upper Township. A copy of the plan was marked P-11. This is a 501C non-profit organization.

He explained the background of the council dating back to 1992 when congress designated 129 miles including 17 tributaries into the federal wild and scenic river system. It is a local management system. Twelve municipalities including Upper Township agreed to participate. Each municipality created a local river management plan and the TR zone was created. Bill Hanley is the River Councilor and Steve Eisenhower is the alternate. Mr. Shawl is a member of the Tuckahoe River Council and attends a meeting every other month. He does not feel that excessive variances should be granted if the Board wants to protect the river. Permitted uses are included in the plan along with buffer requirements. The waivers and variances do not conform to what the Township agreed to do to protect the river. His environmental concerns include the amount of stormwater runoff, impervious coverage on a small lot and the distance of the septic to the water. Another concern is that the river is over used on the weekends in the summer. He stated there are several boat ramps in the area that provide access to the river. He does not feel that public use on this site is needed and doesn't protect the river.

Mr. Akers testified that he is not a professional engineer or planner. Mr. Facenda disagrees that Mr. Akers is an expert as indicated by Mr. Abbott. Mr. Akers stated that he has a BS in business administration from Drexel. He does watershed management and spends a lot of time doing GIS and mapping. Mr. Dietrich added that Mr. Akers has been involved in Watershed Association and Wild and Scenic River since the Township introduced the Tuckahoe River zone part of our ordinance. He feels Mr. Akers should be considered very knowledgeable on the management plan and its aspects and impacts.

Mr. Atkins testified that he has not studied the septic plan or the site plan and that he is not an expert. He has viewed the property from afar. He has no knowledge in regards to the historic use of the property.

Mr. Abbott spoke in regards to the septic, which he stated was constructed without permits. Mr. Maffei stated that the applicant received approval from the Health Department to install the septic. It wasn't until after that when DEP met them on site that they informed them that the rules do not indicate that the applicant does not need a permit so they requested that they get a permit. They subsequently applied for a permit in August 2011. The DEP violation from September was filed since they had to follow up on their request. They did not install the septic system with the intent of violating the permit. It was determined afterward that it was needed. Getting a CAFRA permit to install a septic is out of the ordinary.

Paul Kenney, River Manager, US Department of the Interior, was sworn. He testified that he wrote the correspondence dated February 23, 2011 that was marked as A-8. He works as the Federal representative to the River Council in this case the Great Egg Harbor River. Congress has identified the certain values in this river that warrant protection. This river was studied in the late 1980's and early 1990's and designated in 1992. He explained that the letter marked A-8 is a review by the National Park Service to recommend to the Corp of Engineers that they believe there are no adverse impacts to this proposed project. He reviewed section 7A of the act regarding the bulkheads and docks. They do not review the upland portion of the river.

He believes that what was applied for in the permit under section 7A was acceptable. Under the wild and scenic Rivers Act there are three classifications referring to the level of development along the rivers. He is concerned with the three dwellings on the property since it is not what is permitted in the TR zone. When asked why he is testifying in regards to zoning Mr. Kenney replied that the reason there is a TR zone is because the river is designated. One dwelling per 2 acres is allowed in this zone and three are proposed. He does not have regulatory authority but he is concerned that the level of intensity is beyond what the zoning permits. He wishes the Board would conform to the TR zoning requirements.

Jessica Daher, American Littoral Society, Conservation Coordinator Delaware Bayshore Program residing at McDonald Drive in Seaville, was sworn. This Society is a national non-profit conservation organization. They focus on protecting important coastal lands throughout Salem, Cumberland and Cape May Counties in regards to issues that may pose a direct threat to water quality, wildlife habitat and overall health of the surrounding community. They respectfully ask that the Board deny the T & R Holdings application and adhere to the ordinance. She stated that the Tuckahoe River is federally designated as a Scenic and Recreational River due to its outstandingly remarkable resource values. It is also a NJDEP category one waterway due to its exceptional ecological recreational and water supply significance or exceptional fishery resources and located within a documented bald eagle foraging area. She stated these are a few reasons why the standards should be honored and that this site is not appropriate for the proposed uses. She made comparisons to Barnegat Bay of how the growing number of activities along our waterways are severely impairing the water quality and having far reaching impacts on the economy. She is here representing her organization.

In answer to questions by Mr. Facenda, Ms. Daher testified that she does not dispute that the applicant has the permits as stated. She is here asking the Board to adhere to their ordinance that has placed standards to protect resources such as the Tuckahoe River.

This application will be continued to the December 8, 2011 meeting at 7:30 p.m.

RESOLUTIONS

1. JOSEPH A CALLAHAN – BLOCK 838, LOTS 16.01 & 16.02 – BA16-11

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

2. EUGENE & DAWN DOHERTY – BLOCK 735, LOT 2 – BA18-11

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

3. GARY & BARBARA SEAGRAVES – BLOCK 833, LOT 4 – BA19-11

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

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

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

5. MPS LANDHOLDERS, LLC – BLOCK 479, LOT 46 – BA22-11

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

6. MPS LANDHOLDERS LLC – BLOCK 479, LOTS 30, 31, 32, 35 & 37 – BA23-11

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

BILLS

A motion to pay the bills as presented was made by Mr. Unsworth, and approved with all Board members in favor.

PUBLIC PORTION

The meeting was open to the public. Hearing no response the meeting returned to the Board.

ADJOURNMENT

A motion to adjourn the meeting was made by Mr. Klepac, seconded by Ms. Petrozza, and approved. The meeting was adjourned at 10:43 p.m.

Submitted by,

Shelley Lea