

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
NOVEMBER 15, 2011**

A special meeting of the Upper Township Zoning Board of Adjustment was held on Tuesday, November 15, 2011 at 7:30 p.m.

SALUTE TO THE FLAG

SUNSHINE ANNOUNCEMENT

ROLL CALL

Present: Ted Klepac, Christopher Phifer, Lynn Petrozza, Joseph Healy, Hobart Young and Andrew Shawl.

Absent: Jeffrey Pierson, Matthew Unsworth, Edward Barr and Paul Casaccio.

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

NOMINATE ANDREW SHAWL AS ACTING CHAIRMAN

A motion was made by Mr. Phifer and seconded by Ms. Petrozza, to nominate Andrew Shawl as Acting Chairman. In favor: Klepac, Phifer, Petrozza, Healy, Young.

APPLICATIONS

1. **BRIENNA GINN – BLOCK 715, LOT 9 – BA15-11**

Applicant is requesting variances for lot area, frontage, lot width, lot depth, front, side and rear yard setbacks, maximum building coverage, tree preservation and landscape buffer to construct a single-family dwelling on Seaview Avenue in Beesleys Point.

Thomas Hillegass, Esquire, represented the applicant.

Brienna Ginn, Joseph Maffei and William Hand were sworn.

Ms. Ginn of Ocean City, New Jersey, testified that she currently has the property under agreement. A copy of the Agreement Of Sale For Real Estate was marked as Exhibit A-1. She proposes to construct 3 bedroom, 2 ½ bath, single-family home.

Ms. Ginn testified that she grew up in Upper Township and is a teacher at the Upper Township School. She is purchasing the lot with her fiancée. They plan to construct a

home on the lot and live there. The lot is wooded and they plan to preserve as many trees as possible. The property is a quick commute to her school and she likes the neighborhood.

Ms. Ginn testified that buy/sell letters were sent to the adjacent property owners. A package of seven buy/sell letters was marked as Exhibit A-2. Mr. Hillegass stated that only two responses were sent back. The response by William Bell was marked as A-3 and the response from Frances Malavenda was marked as A-4.

William Hand, Real Estate Broker and Licensed Appraiser testified that he has had a lot of experience in appraising throughout Cape May County with the exception of Ocean City. He has been an appraiser for 25 years and has been a licensed broker since 1982. A copy of Mr. Hand's Resume was marked as A-5. He was accepted as an expert appraiser.

Mr. Hand testified the proposed home is 1,560 sq ft. The surrounding area is predominantly single-family homes of various ages and construction. The proposed home is consistent with the neighborhood. Since the home will be new it would also be an asset to the neighborhood. He estimates the value of the lot with the necessary approvals is \$85,000 to \$90,000. The lot with the house would be valued at \$260,000 to \$280,000. The value would be somewhat consistent with the other property values in the neighborhood. The adjacent property that was constructed in 1948 sold for \$234,000 on August 29, 2011. A copy of the deed for 31 Seaview Avenue was marked as A-6.

Solicitor Marcolongo stated that 31 Seaview Avenue was purchased in 1998 under an individual name. In 2004 an LLC purchased the subject lot. No merger occurred.

Joseph Maffei, Professional Engineer and Planner, testified the lot is 80' x 100' and is located in the R (Residential) zone. Mr. Maffei testified that the lot area, lot frontage, lot width and lot depth are existing non-conforming conditions. Variances are also being requested for front yard setback, side yard setback, rear yard setback, building coverage, tree preservation and landscape buffer. He reviewed the Variance Plan that he prepared dated 6/28/11 and revised on 7/14/11. He stated there are several other 8,000 sq ft lots in the area. He estimates the average size lot in the area is 10,000 sq ft. He tried to match the setbacks of the existing homes in the area with the grandfather clause.

Mr. Maffei testified the applicant would try to maintain as many trees as they can. He stated that a hardship exists since the lot is narrow. He believes the application as proposed has no negative impact on the neighborhood since the proposed setbacks are similar to the setbacks in the area and the house is setback further from the road hence the reason for the rear yard setback. He believes the buy/sell that were sent are proof that they have met the positive criteria. In regards to the negative criteria their intent is to construct a single-family dwelling that is a permitted use. They are scaling down the project and size of the home to better fit in with the neighborhood. The proposed home would fit in with the scheme and character of the neighborhood.

Mr. Maffei stated they will need to obtain a permit for the septic and that city water is available. A permit from Cape Atlantic Soil Conservation District will be needed as well. He believes the zoning would be advanced since this is the perfect location for type of development since it is a proposed single-family home where there are already single-family homes. The new house would be an aesthetic improvement to the neighborhood. The new home would comply with all construction codes. In regards to the negative criteria the same reasons apply. He compared this application to case law to support the application. He testified that they have fit a home comparable in size on a lot that is a little smaller than allowed and thereby still allowing light, air and open space. He stated that in regards to COAH housing a small 2 bedroom house could be built on the property without variances. On site parking is provided.

Ms. Ginn testified there are two bedrooms on the second floor. She chose this lot since she likes Beesleys Point and there are not many lots in the area for sale. This lot is much more affordable than other lots in the Township.

Mr. Hillegass requested to amend the application to request 16.25% building coverage. The meeting was open to the public.

Kevin Halliday, 520 First Avenue, Beesleys Point, was sworn. He believes the new house would be an asset to the neighborhood. He looks forward to having a young family move into the area. He is in favor of the application.

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

MR. PHIFER – Brienna Ginn is under agreement purchase Block 715, Lot 9 located at 33 Seaview Avenue in Beesleys Point. Thomas Hillegass represented Ms. Ginn. Joseph Maffei and William Hand gave testimony in regards to the undersized lot. The applicant proposes to build a 3 bedroom, 2-½ bath single-family home. Buy/sell letters were sent and two responses were received. Either were interested in buying or selling. Mr. Hand testified the proposed dwelling is consistent with the neighborhood since the area is predominantly single-family homes. He also found the new home would be an asset to the neighborhood. The assessed value of the property as a buildable lot and with the proposed house is consistent with the neighborhood. There is not an issue in regards to the lots merging since one was owned by and LLC and the other by an individual. Joseph Maffei testified the lot is 8,000 sq ft and is in the R zone. There are four existing non-conforming conditions and additional bulk variances needed. The average lot in the neighborhood is 10,000 sq ft. He tried to keep the setbacks of the new home consistent with those of the other homes in the neighborhood. The applicant would maintain as many of the trees as possible. This is a hardship variance due to the narrowness of the lot. The rear yard setback is mostly due to the larger front yard. Mr. Maffei testified that he sees no negative impact to the neighborhood. They are in the process of obtaining a septic permit. There is public water in the area. In regards to the purposes of zoning he testified this is an appropriate location for a single-family home consistent with other homes in the neighborhood. Mr. Maffei agreed with Mr. Hand's assessment of the

property. Kevin Halliday, property owner outside of 200 ft, is in favor of the application. He is in favor of the application as proposed.

MR. KLEPAC – Mr. Maffei testified there would be access for emergency vehicles. He concurs with Mr. Phifer.

MR. YOUNG – He finds the applicant has met the positive and negative criteria. This is an isolated lot. The merger issue has been addressed. He concurs with Mr. Phifer. He is in favor of granting the application.

MS PETROZZA – She believes the applicant has met all the criteria. She believes the application can be approved since there is no detriment to the public good and will not substantially impair the intent and purpose of the zoning ordinance.

MR. HEALY – Concurs.

MR. SHAWL – Concurs.

A motion to grant the application with the condition the house is constructed in accordance with the plans by EDA and House Plan 34603 and that the plan be revised to evidence the correct building coverage and that the building coverage shall not exceed 16.25% was made by Mr. Klepac and seconded by Mr. Young. In favor: Klepac, Phifer, Petrozza, Healy, Young, Shawl.

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

Applicant is requesting a front yard setback variance for the installation of an accessory use in the front yard at 185 Perry Road, Petersburg.

Brett and Betty Palmer, 185 Perry Road, Petersburg, were sworn.

Mr. Dietrich was sworn.

Mr. Palmer testified that he would like to install a ground mount solar system in the field in front of his home. He stated that the house is set back far off the road and approximately 80 percent of the property is in the front yard. He would have to take down a lot of trees if he installed the system in the rear yard. He believes this is the best location for the system.

Mr. Palmer testified they have met with Mercury Solar from Mays Landing. The system is proposed half way between the house and street and he would only have to remove one tree. Mrs. Palmer testified that Mercury Solar did an evaluation of both the front and rear yard and found that front is the best location. The front yard would receive 100 percent sun and the rear yard only 83 percent.

Mr. Palmer testified the conduit would be underground. The inverter would be located inside the basement. He submitted photos of his property taken from the road. The pictures show the proposed location of the arrays and how the house is barely visible from the road. Two sheets each with 4 photos were marked as A-1 and A-2. He discussed the safety features of the arrays.

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

MS. PETROZZA – Brett Palmer of 185 Perry Road in Petersburg is the owner of Block 455, Lot 9.02. He is requesting to install a ground mount solar system in the front yard since the house sits back so far from the front property line. There are too many trees in the back yard for the array to work. Mercury Solar performed an inspection to determine the best location for arrays and found the front yard is best. The conduit will be run underground. The highest point of the array is 8.5 ft. The panels would be 220 ft from the street. She finds that locating the panels in the front yard would not be a detriment to the public good due to the large lots in the area.

MR. PHIFER – Only one tree in the front yard has to be taken down. The inverters for the system would be in the basement. This is an approved accessory use, however a variance is needed to allow it to be located in the front yard. He believes the panels can be installed without any detriment to the public good. He feels it is better to locate the panels in the front yard rather than take down the trees in the back yard.

MR. YOUNG – The applicant has proven the criteria needed. This is a permitted accessory use. The house sits back so far that you can hardly see it from the road. The woods behind their house is dense with a lot of old trees. There would be no off site glare.

MR. SHAWL – There was no public comment.

A motion was made by Ms. Petrozza and seconded by Mr. Healy to grant the application with the standard conditions: In favor: Klepac, Petrozza, Phifer, Healy, Young, Shawl.

BILLS

A motion was made and approved to pay the submitted bills.

DISCUSSION

Solicitor Marcolongo stated that during the October 25, 2011 meeting the Board entered into closed session to discuss the appeal of the Ginn matter. During the closed session the Board authorized him to appeal the application, however it has been pointed out to him that the Board should have acted on this during open session.

A motion to authorize Solicitor Marcolongo to proceed with the appeal in the Ginn litigation on Tuckahoe Road was made by Ms. Petrozza and seconded by Mr. Healy. In favor: Phifer, Petrozza, Healy, Young, Shawl. Abstain: Klepac.

ADJOURNMENT

A motion to adjourn the meeting was made by Ms. Petrozza, seconded by Mr. Klepac, and approved. The meeting was adjourned at 9:00 p.m.

Submitted by