

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
FEBRUARY 9, 2012**

The regular meeting of the Upper Township Zoning 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: Ted Klepac, Christopher Phifer, Andrew Shawl, Matthew Unsworth, Lynn Petrozza, Hobart Young, Alistair Lihou, Jeffrey Pierson.

Absent: Joseph Healy and Paul Casaccio.

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

**JEFFREY PIERSON ACTED AS BOARD CHAIRMAN**

**SWEAR IN BOARD PROFESSIONALS**

**APPROVAL OF THE JANUARY 12, 2012 MEETING MINUTES**

A motion was made by Mr. Unsworth and seconded by Ms. Petrozza to approve the minutes as submitted. In favor: Klepac, Phifer, Shawl, Unsworth, Petrozza, Young, Pierson. Abstain: Lihou

**TABLED APPLICATIONS**

The following application has been tabled until the special meeting scheduled for Tuesday, February 28, 2012 at 7:30 p.m. The applicant has agreed to waive the tolling of time. No further notice is required.

1. COMCAST CABLE COMMUNICATIONS INC – BLOCK 588, LOTS 6 & 7 – BA27-11

**RESIGNATION – EDWARD BARR**

Mr. Barr has resigned from the Board due to his new appointment on Township Committee.

**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, use variance since the TR zoning district does not specifically allow the 10 slip marina use or multiple residential units and marine store a use variance to allow two principal uses on the property, bulk variances and variances for providing storm water calculations and asphalt parking area, to renovate an existing tri-plex at 2 Meadowview Lane, Tuckahoe.

Solicitor Marcolongo stated this is the fourth hearing on this application.

A roll call was taken to determine if the Board members have attended each of the hearings or listened to the recording of the hearings.

Klepac – Yes  
Phifer – Yes  
Shawl – Yes  
Unsworth – Yes  
Petrozza – Yes  
Young – Yes  
Pierson – Yes

Solicitor Marcolongo gave a brief history of the previous hearings.

John Scott Abbott, Esquire, was present on behalf of Robert Breunig, adjoining property owner.

Barbara Woolley Allen Dillon, previously sworn, testified they are aware there are other mixed type uses with apartments in the area. She prepared a graph using the zoning map revised in 2007 to show other mixed uses in the area but not in the same zone. The graph was marked as P-19. It shows that the Tuckahoe River is 80 ft to 100 ft wide at this location.

She believes the zoning was changed as part of the plan endorsement process. Mr. Dietrich stated that he was involved in the zone change and later the plan endorsement. He stated that Mr. Akers was an advocate in 1999 and 2000 to have this area rezoned in accordance with the plan. As part of the 2001 master plan reexamination this property along with other mixed use buildings were rezoned from Conservation to Tuckahoe River. If left in the Conservation zone the marina would have been permitted. In 2007 during the plan endorsement it was not discussed. Between Route 49 and Reading Avenue there are at least three other properties with mixed uses.

Ms. Woolley Allen-Dillon believes the change in the zoning is consistent with the desire to keep this a less intense zone. She stated that the mixed-use properties pointed out by Mr. Dietrich are located in a different zone.

Mr. Unsworth commented that in the same zone (TR) there are other commercial uses. Mr. Dietrich testified that the zone was changed as part of the Master Plan Reexamination to conform to what Mr. Akers was doing. He stated that most of the properties along the Tuckahoe River were already developed and changing the zone would not change the existing uses on the lots. He stated that the reason the Planning Board and Township Committee were willing to designate this area as the TR zone was because the uses already that were already there would be able to continue.

James E. Chadwick, Registered Architect and Professional Engineer, was sworn. He testified that in 1993 Mr. Graiser, the prior owner, constructed illegal docks at this site and was cited by the DEP. In 1994 Mr. Graiser illegally converted one of the residential units into a bar/place of assembly. In 1994 the Zoning Officer, Construction Official and County Health Department cited Mr. Graiser for an illegal operation. Mr. Graiser then made application to the Zoning Board and the County Board of Appeals. He has not found any evidence that the unit was converted back to a residential use. A copy of a four-page document from the Cape May County Board of Appeals dated September 13, 1995 was marked P-20. A copy of the Notice and Order of Penalty issued by Edward Kenney, dated April 27, 1994, for the conversion of a residence into a bar/club was marked P-21. A copy of the Notice and Order of Penalty dated June 19, 1995 also issued by Mr. Kenney was marked P-22.

Mr. Chadwick stated that the applicant has produced multiple documents to the Township, State and Army Corp that describe this property as an existing 10-slip marina. He feels they have provided misleading information to obtain the approvals they have already gained. He also disputes the fact that there are three dwelling units.

There were questions by the Board at this time.

Mr. Chadwick stated that the Board is assuming, based on the applicants testimony, that the prior use was a commercial marina. Their indication to the Board is that it was never a commercial marina. A copy of a Notice of Violation from the DEP to Mr. Graiser, dated October 21, 1993 for construction of 800 sq ft of floating docks without the proper permits was marked P-23.

Mr. Marcolongo explained there was just a 30-minute break to make copies and provide each member of the Board with copies of the exhibits since the Board members have commented that they are not getting a chance to review the submitted documents.

Mr. Pierson commented that exhibit P-23 states possible violation. He asked if the violation was satisfied. Mr. Chadwick stated that Mr. Graiser was asked to apply for a waterfront development permit. DEP records indicate that a waterfront permit

application was submitted and the process continued for a period of time. The current applicants subsequently filed a waterfront development permit application with the DEP. The docks that are now proposed are legal as far as DEP is concerned. The illegal docks constructed by Mr. Graiser were removed.

Mr. Maffei, previously sworn, testified that the DEP deemed the follow up permit legal.

Mr. Chadwick continued with his testimony. He discussed Resolution BA14-94 previously submitted into evidence as P-12. He believes the resolution indicates that the property was never used as a commercial marina. He submitted a copy of a construction permit no. 04-244 that states there are two dwelling units. These constructions permit application for a wood truss roof was signed in May 2004.

Mr. Chadwick stated that the residential units have not been occupied for a long time. He stated that the units are being used for storage. He submitted a copy of a deed dated December 12, 2008 between Glenn and Joan Graiser and T& R Holdings LLC. The deed was marked exhibit P-25. Mr. Chadwick stated that the deed is related to the bankruptcy and sale of the property. He stated that the deed indicates that the property was used exclusively as the previous owners principal residence. He stated there are no existing conditions plans submitted with this application. He stated that a dwelling unit must have kitchen and sanitary facilities. He read the definition of a dwelling unit from the ordinance. It is his understanding from discussions with his client that there are no cooking facilities in the lower level units.

Mr. Young stated that he was inside of the dwelling units in 1994-1995 when he was Zoning Officer for Upper Township. He saw three separate efficiency units during his inspections. Each unit had its own bathroom.

Mr. Chadwick believes the lot is significantly undersized for the proposed use. There is nothing the applicant can do about the non-conforming lot depth since there is no additional land to purchase in the water to create the lot depth needed. He believes that raising the structure will significantly impact the front yard setback. He submitted a comparison titled existing vs. proposed vs. allowable that was marked P-26. The exhibit shows the property line and the one-story section of the existing building along with the proposed size of the structure. He stated that the wall would be extended to 35 ft, the maximum allowable height. The drawing also shows the required setback line. He stated that the entire building falls within the side yard setback. He also stated that the steep pitch roof would contain no living space. He asked why the applicant would propose this tall of a building. He referred to the original architectural plans showing a lower roof. The applicant later amended to roof to a 12 and 12 pitch. As an architect he does not know why the roof has to be this tall. He reviewed the permitted and proposed building coverage and impervious coverage. He stated that if the applicant paved the parking area rather than stone they would increase the impervious coverage by approximately 12,000 sq ft. increasing the impervious coverage to 72%. He feels this shows that the excess

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coverage is a result of overbuilding the site. He believes a single-family residence would comply more with the ordinance.

Mr. Shawl stated that other commercial establishments in the Township have asked for a waiver to allow stone parking.

Mr. Chadwick submitted a series of documents from the US Army Corps of Engineers and the Department of the Army. He stated that each of the documents indicates an existing marina when it is not. The documents were marked P-27.

Mr. Chadwick submitted pages 18 and 19 and 8 and 9 of a Compliance Statement prepared by EDA and submitted to the DEP. This document was marked P-28. He has highlighted certain paragraphs for the Board. The handwritten statements are to highlight various comments or statements shown on the Compliance Statement that he does not believe to be accurate. He feels that the statement made in the report that the proposed use is compatible with the adjacent uses is misleading. He stated that the report does not indicate that Meadow View Lane is a 12 ft cartway. He stated that the applicants are indicating to the governmental agencies that this is an existing 10-slip marina when it is not. He stated that the vegetated buffer adjacent to Route 50 and partially extended down Meadow View Lane has been removed except for some trees.

Mr. Young stated this has been referred to as the "Tuckahoe Marina" for as long as he can remember.

Mr. Chadwick referred to the Waterfront Development Permit that was issued by the DEP and previously marked A-3. He stated that one of the conditions in the permit prohibits on site construction between March 1<sup>st</sup> and June 30<sup>th</sup> since this could lead to the runoff of silt materials into the river. Another condition was that a CAFRA permit was required prior to the construction of the septic system or reconstruction of the existing building. He stated that the applicant built the septic system prior to receiving CAFRA approval and during the months they were prohibited to work. The applicants were issued a violation notice by the DEP because of that activity. He believes this shows a pattern of conduct in doing the work while ignoring the strict requirements of the DEP.

Mr. Dietrich stated that the bulkhead is a waterfront activity and wouldn't be in violation. Mr. Chadwick stated that he is referring to the septic system, site filling and site grading. He submitted four photographs of the site dated March 11, 2011. Mr. Chadwick verified that his client took the photos.

Mr. Maffei testified that the septic was installed during this time frame. The applicants were unaware of the condition. Part of their submission to CAFRA was to address the septic system and that will be part of the approved CAFRA permit.

Solicitor Marcolongo marked a series of ten photographs on five sheets of paper as P-30. Mr. Chadwick testified the first two photos show the proximity of the guardrail to Meadow View Lane making it a difficult to turn and get boats on site. He stated that

anyone with a boat and trailer trying to buy bait would have to turn onto Meadow View Lane or park on Route 50 and obstruct even more visibility. The next two were taken of Meadow View Lane were taken on June 6, 2011 and shows the vegetation. The bottom photo shows the limited visibility on Route 50. The next photo shows the where the vegetation has been removed. He believes the next two-photos show what he referred to as a dangerous intersection at the corner of Route 50 and Meadow View Lane. He stated that Meadow View Lane would not be widened and vehicles would have to wait on Route 50 for a vehicle trying to exit the Lane.

Mr. Dietrich stated that he received a final design plan of the reconstruction of the bridge. The guide rail will be set back so it will no longer be on the curb line to provide increased visibility.

Mr. Chadwick testified there was not a traffic study done. He believes it is the applicant's responsibility to provide information about the safety of the site. He testified he is not a traffic engineer.

Another series of five pages with ten photographs was submitted by Mr. Chadwick and marked as P-31. The photos show the busted guardrail on Route 50. A copy of a portion of the applicants site plan was marked P-32. he has written notes on the site plan.

Mr. Abbott requested that the Board Engineer meet on site with the applicant's engineer. Mr. Chadwick feels it would be appropriate for the engineer or the zoning officer to visit the site and determine if the dwelling units exist. The applicants did not have a problem with the Board Engineer making an inspection of the property.

Solicitor Marcolongo announced this matter would be continued on March 8, 2012 at 7:30 p.m.

### **BILLS**

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

### **ADJOURNMENT**

A motion to adjourn the meeting was made by Mr. Shawl. The meeting was adjourned at 10:45 p.m.

Submitted by,

Shelley Lea