

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
SPECIAL MEETING HELD ON FEBRUARY 28, 2012**

A special 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, Matthew Unsworth, Lynn Petrozza, Joseph Healy, Hobart Young, Alistair Lihou and Paul Casaccio.

Absent: Jeffrey Pierson.

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

ALISTAIR LIHOU SWORN IN AS BOARD MEMBER

APPLICATIONS

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

Applicant is requesting preliminary and final site plan approval and a use variance to allow the expansion of a non-conforming use, variances for front yard setback and building coverage, fence height and landscape buffers to construct a 440 ft addition to the existing Center Hub, relocate the chain link fence and expand the gravel parking area at 851 Route US 9 South, Palermo.

James W. Burns, Esquire, represented the applicant. They are requesting a use variance (D3) site plan approval and bulk variances needed for the expansion of a pre-existing facility used as a data center hub.

Solicitor Marcolongo explained that variances for lot area, lot frontage, lot width, lot depth and rear yard setback were previously approved and not needed as part of this application.

Mr. Burns explained they are requesting a variance for building coverage to allow 13.9 percent where only 10 percent is permitted. They are also requesting a variance to allow

a 6 ft high fence in the front yard where only 4 ft is permitted. The height of the fence is for security purposes. He stated that this site was strategically selected many years ago to serve all of Cape May County cable services. The site provides emergency notifications for the entire area and services the US Coast Guard Station as well as the Office of Emergency Management. This is the main source for all of the weather alerts. The addition is to improve the cable service throughout the area and allow new services and future technology changes. The approvals in 2006 were to get the applicant through until 2012. The facility will be used to help reduce the number of outages and technical problems. There will be aesthetic improvements made to the building and a new generator will be installed with a hush box.

John C. Grove, Bayville, New Jersey; John Kornick and Carol Tutelian were sworn.

Mr. Grove, Area Director of Engineering for Southern New Jersey stated that Cape May and Atlantic Counties are his responsibility. He testified the technology expanses that they have had since 1998 such as internet and high definition television have used up the space at this site. To be able to expand and offer additional services and competitive services for the residents of Cape May County the addition is necessary. He explained that this site is served by their main facility in Absecon. They cannot relocate any further south since it would be too far from Absecon and no further north electronically because it places it too far from Rio Grande causing a significant interruption of services. If they were to run out of space they would be incapable of offering new services to the residents.

Mr. Grove testified that this location services multiple offices in the Coast Guard, the Office of Emergency Management, Schools throughout the County and delivers emergency announcements. This is a vital site to Southern New Jersey. They propose to replace the generator with a quiet pack generator. The quiet pack ducts the noise up instead of out. They propose to install security cameras to patrol access. He stated this would remain an unmanned site and only electronics would be housed at the site.

Mr. Grove testified they propose to improve the site aesthetically. He is in favor of performing quarterly visits to the site and communicating to the Township after each visit. He would provide contact information for a head end manager. The Board suggested a maintenance schedule to guarantee the property would be kept up.

Mr. Grove described the existing generator that is in a housing but the housing is not muffled. The housing of the proposed generator is totally insulated. The field department which is line technicians and head end technicians are there to perform maintenance and upgrades. He stated that currently there are 1 or 2 technicians visiting the site 3 times a week. He thinks there would be less visits if the addition were approved. They do not propose any satellite dishes or antennas on site.

Mr. Grove indicated the only other thing that makes noise would be the heating ventilation and air-conditioning. They are proposing the addition in the front of the building since the generator is located in the rear.

Mr. Burns submitted a package of 6 photographs of the property taken in October 2011. The photos were marked A-1. Mr. Dietrich asked if quarterly meetings were a condition could they provide a log of how many people came and went on an average day.

John W. Kornick, Professional Engineer, with K2 Consulting Engineers, prepared the site plan dated 10/24/11 and 11/23/11. Mr. Kornick testified the lot is approximately 6,416 sq ft (.14 acre) and located in the Center Residential (R) zoning district. They propose a 20' x 22' addition (440 sq ft) to the front of the building. The stone parking area will be extended 8 ft toward Route 9 and the fence and gate would be relocated to accommodate the expansion. He will forward a copy of the new access permit from DEP to the Board. They have received a waiver from the Cape May County Planning Board and approval from the Cape Atlantic Soil Conservation District. A wall pack will be installed to add additional lighting at the front door. Vehicles will be able to turn around on site so they don't have to back out onto Route 9. He reviewed the plans by Ruggieri & Partners, last revised 11/23/11.

Mr. Kornick testified the applicant proposes a new 8/12-pitch roof to eliminate the industrial look of the building. The addition would have concrete masonry block. He stated that a maintenance plan could be tied in with the engineering document. They propose a 6 ft high chain link fence.

There was discussion concerning the Township owned lots surrounding this property. Solicitor Marcolongo stated that he is aware of the conversations that took place between the applicant and the Township concerning these lots. Comcast does not desire to purchase the property and they are requesting the necessary bulk variances under the C2 criteria.

Mr. Dietrich explained that paved parking is not needed since the property is located in the Residential zone. He stated there is curbing along Route 9. He does not feel sidewalks are necessary.

Mr. Burns agreed to a Deed of Consolidation as a condition of approval.

Mr. Kornick agreed to add weed control in the stone area as part of the engineer plan along with the maintenance schedule.

There was discussion concerning the proposed fence. Mr. Burns agreed to a board on board or similar type vinyl fence with a rolling gate. There would be a knock box on the outside of the building in case the fire company ever had to gain access and fire suppression inside.

Mr. Groves testified there are five proposed wall mounted air conditioner units, but not all of them would run at the same time.

Carol Tutelian, Professional Planner, testified that public utilities are permitted as a conditional use in this zone. The application requires a D3 variance since it does not meet all of the seven conditions in Section 20-6.4 of the ordinance.

Ms. Tutelian testified that variances are needed for front yard setback to allow 41 ft where 50 ft is required. They are requesting a side yard setback variance to allow 15 ft to the south and 12.42 ft to the north for a total of 28 ft aggregate where 25 ft setback and 50 ft aggregate is required. A variance is needed to allow the building coverage to be 13.9% where 10% is permitted. The plan shows a 0% buffer is proposed, however there have been additional plantings along the north property line. A variance is also needed to allow a 6 ft high fence in the front yard.

Ms. Tutelian testified she believes that the project meets the definition of an inherently beneficial use as shown in the MLUL. In regards to the negative criteria, she believes the project would not cause substantial detriment to the public good since the application allows the opportunity to substantially improve the aesthetics of the site. The site is particularly suited for the expansion of the building since it is an existing approved facility. The project will not cause substantial impairment to the intent and purpose of the zoning plan since the proposed front yard setback would be consistent with the neighborhood. She believes the facility can be improved without a negative impact on the zoning plan since utility uses are not a prohibited use and was approved by the Board once before.

She believes the bulk variances can be granted using the C2 criteria since there are numerous advancements to the purpose of zoning. She believes that the benefits of providing this service to the community would outweigh any of the requested variances.

The meeting was open to the public.

Timothy Dickey, 118 Bryan Road, Palermo, was sworn. Mr. Dickey testified that he is the owner of the Little School House of Palermo that is within 200 ft of the property. He stated that at previous meetings the applicant testified the building would be unmanned but there are trucks on site everyday. The trucks park on the vegetation and on the side of Route 9. He stated that the addition in the front would allow only one parking space on site. He asked how long construction would take. He is in favor of improving the building but he also wants assurances in place such as a bond in case they do not maintain the site. He stated that the generator sounds like a large truck and blasts out black smoke when it fires up. He thinks the applicant should have to buy the adjacent Township property. He testified there are one to three vehicles on site almost daily for hours at a time. He is in favor of the chain link fence since vinyl fences get moldy.

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Nancy Didriksen, 833 Route US 9 South, was sworn. She has lived here for 32 years. She stated that the applicant has failed to comply with their previous approvals. There are as many as three Comcast vans on site daily. She has witnessed the employee's playing cards and dominos. She can smell the cigarette smoke from her home. She has witnessed men urinating in the bushes. The vans are left to idle inside the fence as early as 6:45 a.m. The building was supposed to be aesthetically pleasing to the neighborhood yet it has become filthy. The landscaping has been driven over by the vans. No plantings to buffer the view or noise were ever proposed along the adjacent property line. She is concerned since there is no buffer proposed this time. She feels that what is there is not enough to camouflage the existing structure or proposed addition. The generator runs non-stop and the back up generator sounds like a jet. She does not want the applicant to purchase additional land since that would further invade her privacy and decrease the value of her 1.63 acres. She does not want the Township to allow the further deterioration of her peace, privacy and quality of life. She concurs with Mr. Dickey's testimony regarding the vans. She would like to see an evergreen buffer that runs the entire length of the applicant's property and hers.

Hearing no response the meeting returned to the Board.

Mr. Grove testified that he reacted after receiving a complaint from the zoning office. He stated that the building is in the shape it is due to the lack of monitoring. He visits the building every 3 to 4 months. He agrees that the number of vehicles allowed on the site at one time should be limited to one.

Mr. Dietrich suggested 6 ft high Leland cypress along the north property line. He feels the applicant should ask permission to plant the trees on the Township owned property.

Mr. Grove stated that he would have the existing building power washed and painted to match the addition. He stated that the placement of the equipment dictates where the air conditioning units will go.

James J. Obermeyer, Contractor, was sworn in. He described how the air conditioning units work. He stated that the units are a little louder than a window unit but the fence and vegetation would help dampen the noise.

The Board was asked for findings of fact.

MR. SHAWL ~ Comcast Cable Communications is the owner of 851 Route US 9 South in Palermo, New Jersey. This is an existing facility. They are before the Board requesting variances for front yard setback, side yard setbacks, lot coverage and fence height. The applicants propose a 440 sq ft addition to the front of the building making it closer to Route 9. The expansion is needed to reduce outages and facilitate new technology along with new and expanded services. The location is specific to the rest of the network. Emergency information is transmitted along through this site to various institutions. The proposed addition would be one story with a pitched roof. There is an

existing concrete apron and stone driveway. The applicant agreed to a deed of consolidation. The gate at the access will be vinyl material and acceptable to the Township Engineer. A double row of 6 ft evergreens will be planted on the north side of the property. The existing building will be power washed and painted. A no idling sign will be displayed. Only one truck will be permitted to park on site at one time except during an emergency. There will be no parking on Route 9. A maintenance plan will be filed and quarterly meetings will be held. Testimony by the applicants planner indicated that public utilities are permitted as a conditional use in the residential zone. This use meets all but one of the seven criteria. Testimony included that there would not be substantial detriment to the public good and would not impair the intent and purpose of the zoning plan since the front yard setback is consistent with other structures in the neighborhood.

MS. PETROZZA ~ She concurs.

MR. PHIFER ~ The new generator will be quieter than the current generator. Contact information will be given for a Comcast representative.

MR. LIHOU ~ He would like info regarding the decibel level of the existing and proposed generator.

MR. YOUNG ~ He believes the applicant has met the burden of proofs needed for the conditional use as well as the side yard setback variance. He believes the applicant has met and addressed all the concerns of the neighbors. Comcast must be made to adhere to the maintenance plan.

MR. UNSWORTH ~ He concurs with his colleagues. The applicant has addressed the concerns of the Board and the public regarding parking, noise, traffic, lighting and visual impact. The conditions that have been imposed and the maintenance inspection schedules should alleviate any concerns of the future use of the site. He would be in favor of the application.

MR. HEALY ~ He concurs.

MR. KLEPAC – Quarterly meetings will be held beginning right away.

MR. CASACCIO – The hip roof will be consistent with the neighborhood. The addition should handle all the growing telephone and computer age needs of the future. This is an appropriate location. This building takes care of all the citizens of Cape May County. The lot is unique since it is surrounded by Township land.

A motion was made by Mr. Unsworth and seconded by Mr. Shawl, to grant amended preliminary and final site plan approval, a conditional use variance, bulk variances including front yard setback, building coverage, fence height, landscape buffer, side yard setbacks and any required waivers with the condition the applicant will provide a Deed of Consolidation for the review of the Board Solicitor, prepare a maintenance plan to the satisfaction of the Board Engineer, the Maintenance Plan will include weed control, snow removal, gutter maintenance, leaf removal, landscape maintenance on at least a biweekly basis during the spring, summer and fall months, the applicant will be required to schedule quarterly monitoring meetings with the Zoning Official and during those meetings provide visit logs to the site in regards to those providing maintenance and/or landscaping work, the applicant shall revise its plans to provide for a 6 ft high vinyl privacy fence instead of the chain link fence and include a vinyl rolling gate, 6 ft high

evergreens will be planted in front of the fence pursuant to the plan, no idling signs will be posted on site, the applicant has agreed there would be only one motor vehicle on the site except for in an emergency and that no vehicles would be parked on Route 9, the plans shall be revised to evidence a double row of 6 ft high Leland cypress along the northern property line to the satisfaction of the Board Engineer, the existing portion of the building will be power washed and painted to match the addition, the applicant will provide the Zoning Official with the contact information for the local contact person and provide updated numbers as needed, the applicant will provide the Zoning Officer with their current standard maintenance plan, no equipment will be installed in the building until a Certificate of Occupancy has been issued. In favor: Klepac, Phifer, Shawl, Unsworth, Petrozza, Healy, Casaccio.

2. JOHN & DAVINA WECHSLER – BLOCK 851, LOT 4 – BA02-12

Applicants are requesting variances for front yard setback, minimum gross floor area of the dwelling and previously approved lot depth for a single-family dwelling at 13 N. Commonwealth Avenue, Strathmere.

John Batastini, Esquire, represented the applicant. He stated that the applicants received variances in 2008 to construct a dwelling on this lot. They now propose to move a house from a few doors down to this vacant lot.

Joseph Maffei, Professional Engineer, was sworn. Mr. Maffei reviewed the previously approved setbacks. He also reviewed the variance plan that he prepared last revised 1-31-12. The house currently located on lot 7 on Williams Avenue will be relocated to this lot. He testified that they now propose one set of stairs instead of the double staircase resulting in a front yard setback of 11.91 ft where 15 ft is required. The Board previously approved a 12 ft setback. They now meet the 27% building coverage.

Mr. Maffei testified the house would be moved to this location and then raised to meet flood elevation. The house is a rancher style and smaller than previously approved. A variance is needed since the house is approximately 816 sq ft where 1,000 sq ft is required. A garage will be added underneath for parking. The driveway is being proposed off of Williams Avenue rather than Commonwealth Avenue. He feels this is an improvement from the previous plan since they will be recycling an existing home. Curb and sidewalk are included in the plan. The front yard setback variance is needed due to the location of the septic. Two front yard setbacks are needed since this is a corner lot.

Mr. Maffei stated that he is utilizing the C2 criteria for this application since the house will be raised to meet flood elevation plus one foot. The house exists and the applicant is refurbishing it. Parking and storage will be added under the home. Architectural treatments will be added to enhance the appearance of the rancher such as lattice. The pilings will not be visible because of the architectural treatments. He feels the house fits in with the neighborhood.

Solicitor Marcolongo marked four photographs of the existing house as Exhibit A-1.

Mr. Dietrich stated that the proposed building height is 25.9 ft. so no parking underneath the building is required. He described the new handicap requirements in regards to the sidewalk.

The meeting was open to the public.

Shari Whitlock, West Chester, PA, was sworn. She is the owner of 2 properties on Williams Avenue. She testified at the 2008 hearing regarding the setbacks. She is opposed to raising the small house. She does not believe this will be aesthetically pleasing and would decrease her property values. She stated that the house is not what the future of Strathmere is turning into to. She is opposed to locating the driveway on Williams Avenue.

Jeffrey Skversky, Bensalem, PA, was sworn. He is the owner of 5 N. Commonwealth Avenue. He concurs with Mrs. Whitlock. He believes that moving the house and raising it would create an eyesore and would not fit in with the neighborhood.

Phillip Whitlock, West Chester, PA, was sworn. He has the same concerns as his wife. He is not in favor of the architectural details of the home. The house would not fit with the rest of the community. He is not in favor of raising the house.

Michael Missanelli, Wynnewood, PA, was sworn. He is the owner of 5 Williams Avenue. He concurs with everything that has been said about the aesthetics of the house. He feels this is an attempt to make the property more marketable. This house would not enhance the neighborhood. The cottage houses are being phased out and the neighborhood is changing. He feels that putting this house on pilings would defeat the whole purpose of aesthetic value on this street.

Jim McDonald, 9 N. Commonwealth Avenue, Strathmere, was sworn. He agrees with his neighbors. He feels the house would look strange if it were raised.

Hearing no further comment the meeting returned to the Board for finding of facts.

MR. SHAWL ~ The applicants previously received approvals (BA05-08) for a different house on the same lot. The applicant proposes to move an existing house onto their lot and raise it to flood elevation. Architectural elements are proposed around the pilings. One parking space and storage would be provided under the house. The applicants engineer testified the positive criteria would be met since the house would be raised above flood and they would be recycling a home from the neighborhood. The property is in the Resort Residential zone and this is a resort residential type usage. This is a corner lot. The lot is smaller therefore a small home would be a sufficient use for the property. He concurs with the testimony given by Mr. Maffei.

MS. PETROZZA ~ She feels this application could be granted since there is no substantial detriment to the public good and would not substantially impair the intent or purpose of the zone plan or zoning ordinance.

MR. PHIFER ~ He concurs. Any house constructed on this lot would have to be raised to flood elevation. He believes that relocating a small house on this lot would not be a detriment.

MR. YOUNG ~ He concurs. The variances requested are minimal. There are no Township ordinances that address aesthetics. He is in favor of the application.

MR. LIHOU ~ He is in favor of the application for the reasons stated.

MR. UNSWORTH ~ He concurs. He would also be in favor of the application.

MR. HEALY ~ He concurs. He is in favor of the application.

MR. KLEPAC ~ He concurs. There has been testimony the proposed home is compatible to the existing character of the neighborhood but five members of the public do not agree.

MR. CASACCIO ~ He concurs. He is in favor since the house is already in the neighborhood and would not substantially impair the zoning plan.

A motion was made by Ms Petrozza and seconded by Mr. Unsworth, to grant the variances for front yard setback and minimum gross building area, with the condition the applicant submit revised plans evidencing the reconfiguration of the stairs and the handicap ramp on the sidewalk pursuant to the ADA regulations and to the Board Engineers satisfaction and the revised architectural elements shall be to the satisfaction of the Board Engineer. In favor: Klepac, Phifer, Shawl, Unsworth, Petrozza, Healy, Casaccio.

BILLS

A motion to approve the bills was made by Mr. Shawl, seconded by Mr. Healy, and approved.

CLOSED SESSION

A motion was made by Mr. Unsworth and seconded by Ms. Petrozza to go into Closed Session to discuss pending litigation.

ADJOURNMENT

A motion to adjourn the meeting was made by Mr. Unsworth, seconded by Ms. Petrozza, and approved. The meeting was adjourned at 10:47 p.m.

Submitted by,

Shelley Lea