

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING AGENDA
JUNE 14, 2012**

The regular meeting of the Upper Township Board of Adjustment was held at the Township Hall, 2100 Tuckahoe Road, Petersburg, New Jersey, at 7:30 p.m.

CALL TO ORDER

SALUTE TO THE FLAG

ROLL CALL

Present: Ted Klepac, Christopher Phifer, Andrew Shawl, Matthew Unsworth, Lynn Petrozza, Hobart Young, Alistair Lihou, Susan Adelizzi-Schmidt and Jeffrey Pierson, Acting Chairman.

Absent: Joseph Healy and Chairman Paul Casaccio.

APPROVAL OF THE MAY 3, 2012 SPECIAL ZONING BOARD MEETING MINUTES AND THE MAY 10, 2012 REGULAR MEETING MINUTES

A motion to approve the minutes was made by Mr. Unsworth and seconded by Ms. Petrozza.

TABLED APPLICATIONS

APPLICATIONS

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

Continuation of an application for preliminary and final site plan approval, use variance since the TR zoning district does not specifically allow the marina use or multiple residential units, a use variance to allow two principal uses on the property, bulk variances and variances for providing storm water calculations and asphalt paving area, to renovate an existing tri-plex at 2 Meadowview Lane, Tuckahoe.

Paul Dietrich, Board Engineer, explained that the testimony he gave at the previous meeting was not accurate in regards to landscape buffers and tree preservation. He had indicated the undersize lot ordinance had a provision that they would not need this. Under most cases the buffer and preservation are not required, however they are needed for this particular application since this is a non-conforming use.

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Solicitor Marcolongo reviewed the relief requested to construct or renovate this dilapidated facility into a marina with an associated office and three residential units. The Board has had the opportunity to review all the testimony and exhibits from the previous seven meetings. He noted that each of the seven Board members have attended each of the seven meetings or listened to the recording of the meeting. It is now time for the Board to make its findings of facts and conclusions.

MR. SHAWL – T & R Holdings of 1150 Route 50 in Petersburg, New Jersey are before the Board for premises located at 2 Meadowview Lane in Tuckahoe, Block 348, Lot 1.01. The property is situated within the Tuckahoe Riverfront Zoning District, which does not expressly permit marinas or multiple residential units. In addition to use variances T & R is also requesting variances for lot area, lot depth, front, rear and side yard setbacks, lot coverage and landscape buffering. These bulk variances are mostly for pre-existing, non-conforming conditions. They are also seeking preliminary and final site plan approval and waivers for environmental assessment, storm water management calculations and providing an asphalt parking area. The Board has heard a lot of testimony. T & R Holdings is a partnership between Tim Schellinger and Ray Leps. Mr. Leps provided testimony about businesses that he has in Upper Township and the circumstances in which he acquired the subject property in 2008. At the time of purchase there was a sunken houseboat on the property and the bulkhead was in terrible condition. The building leaked and there was constant flooding. Since that time the bulkhead has been replaced and it is greatly helping the erosion problem. They have done other improvements such as a new septic system, cleaning the yard and removing debris from the river.

The applicants are proposing ten boat slips. They would also provide public access to the river. There would be no sale of gas or boats. There would be no boat ramp. A maximum of ten boats could be stored in the parking area and not in the grass. Joseph Maffei, Professional Planner, giving testimony in support of the applicant, has testified the proposed use is a low intensity use and that the proposed changes to the property would fit within the character of the township and this portion of the Tuckahoe River. Boat slips in the area are limited. The bulkhead is an improvement to the shoreline and DEP approval was issued. Access to the building would be via Meadowview Lane. This is the first house on Meadowview Lane. Yanks Boat Works is visible from the property. The ordinance does not contain a definition of a marina. An approved septic was installed. Thirteen parking spaces are proposed. The parking area is stone rather than asphalt and will benefit drainage. The bulkhead is slightly different than the 2009 application. Mr. Maffei testified that providing a marina does benefit the public good. There are three existing one-bedroom apartments on the site. If this were developed as a single-family home chances are there would not be public access. There is not a big difference proposed in the storm water, which is justification for not providing the drainage calculations. Environmental assessment was required as part of the CAFRA permit. The three apartments would promote the general welfare by being raised above flood elevation. The proposed height of the structure would not degrade the light, air and open space. There is sufficient space for this development. There is a small area of wetlands that have been preserved. Mr. Maffei believes that the proposed changes will

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not impair the intent and purpose of the zone plan. A concrete curb would add impervious surface and generally is not needed. A variance is being requested for the 25 ft wide landscape buffer. There is really no space on the half-acre site to provide a landscape buffer. A landscape buffer would obscure the visual access to the river. The size of the property is existing and creates a hardship. The Army Corp of Engineers and the Department of Environmental Protection have approved the ten-slip marina as part of their permit for waterfront development. During the course of the meetings the building height was changed and modified plans were submitted. The exterior of the building is consistent with other homes in the area and adds to the character of the neighborhood. The attorney for the objector has indicated this is an undersized lot, this is an incompatible use for the lot and that there is documentation about a public landing and that the use variance to provide a higher building with the apartments is not in keeping with the character of the neighborhood. Fred Akers gave testimony regarding the wild and scenic Egg Harbor River Comprehensive Plan. Mr. Akers represents the Great Egg Harbor Watershed Association in which Mr. Shawl is a member. Mr. Akers felt there are environmental concerns and that future development may cause these to be exacerbated. Mr. Akers had stated there are a lot of accesses to the river already. Jessica Daher, representative of the American Littoral Society, came with a letter. There was testimony that the water quality of the Tuckahoe River has been impaired since 2002. Upper Township has provided information on their zoning plan to the Great Egg Harbor Watershed Association and Comprehensive Plan for the Wild and Scenic Area that did not include the type of uses the applicant is proposing. Barbara Woolley Allen Dillon, Professional Planner, took issue with the number and type of variances that the applicants are requesting. She had information about multifamily dwellings in the area that seemed inconsistent. She talked about the zone plan and the Tuckahoe Riverfront Zone and that it is more appropriate for a single-family dwelling. She felt the requested use variances did not meet the criteria for the special reasons that are listed in the NJ Statute. She felt the applicant had not met their burden of proof. She cited the fact that the 2006 Master Plan is inconsistent with what is being proposed although the units and marina were there prior to the Master Plan Reexamination. The Township Engineer testified that the existing uses in the TR zone are grandfathered and could continue. Mrs. Dillon also testified the marina is inconsistent with the Corbin City side of the river and that within the town center, outside of the TR zone, would be a more appropriate place for a multi-family development. She also commented on environmental issues, however she is not an expert on environmental matters.

James Chadwick, Professional Engineer, has appeared before the Board previously, testified on behalf of the objector. He argued that the previous owner illegally constructed docks and illegally converted a unit into a place of assembly and therefore the units are not allowed. There is an issue regarding Mr. Grasier and his intent in converting the units. The Township Engineer provided testimony after his site visit that there are three dwelling units although they are not currently in livable condition. Mr. Chadwick provided information about the bulk zoning issues indicating that the lot area is much smaller than required.

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At one point the applicant was asking for bait and tackle shop but that is not going to happen. The proposed building height is being reduced to 32 ft. The roof pitch is in keeping with the character of the neighborhood. The CAFRA permit has been received. The building footprint is being reduced by 350 sq ft. A permit was received from Cape Atlantic Soil Conservation District. The revised plans indicate there are 3 apartments, 10 boat slips and an office. The building will be raised one foot above flood elevation. The first floor will be one apartment with an office. There will be two apartments on the second floor. The septic system is 75 ft from the bulkhead. A traffic impact study was not prepared since it is not required. Mr. Chadwick had testified that he felt changes made to the plan after the CAFRA permit was issued were major changes and that the application should have been re-noticed. Solicitor Marcolongo provided legal opinion that the changes were not major and re-noticing was not necessary. Mr. Chadwick provided testimony regarding the difference in septic flow for a single-family dwelling and three apartments. Mr. Facenda stated that in 2007 the previous owners obtained a Water Front Development Permit for 10 designated mooring sites and a seven year Tideland License. The applicant took over the property after those permits were issued. There is no knowledge of an attempt to abandon the residential units or the boat slips. Mr. Raday hired by the opposition, reviewed documents in order to create a traffic study. The study took issue with what Mr. Raday feels is a dangerous intersection at Route 50 and Meadowview Lane. The Township Engineer indicated that this intersection would be addressed as part of the upcoming Route 50 bridge construction. The intersection would be slightly wider and the site triangle would be improved. Mr. Raday did not review or look for any accident reports and there were no traffic counts included in his report. The basis for the traffic study was that this is an existing single-family home that would be developed into 3 units and 10-slip marina. He finds the basis for his report to be inconsistent with the findings by the DEP and the exhibits submitted by the applicant. Bruce Breunig provided testimony and many documents regarding the subject property. The owner of 6 Meadowview Lane feels that the improvements proposed by the applicant would increase the property values along Meadowview Lane and would be good for the neighborhood. Another member of the public from outside of 200 ft expressed that she liked the idea of the apartments and docks along the river. Closing remarks by Mr. Abbott, Attorney for Mr. Breunig, included that the lot is small, the applicants are doubling the cubic volume of the building and that the applicant did not meet his burden of proof in requesting the changes and the wild and scenic river. He did not believe the relief could be granted because the inherently beneficial use could not be shown. Mr. Facenda gave closing remarks about the positive aspects of renovating the property. The location along the river is well suited for this particular use and there is no substantial detriment to the zoning plan or the master plan and that the shoreline resources should be used for recreation.

The National Park Service does not have authority over the Wild and Scenic River. They receive copies of any permit applications and they comment on them, but their comments are not binding. The Wild and Scenic River designation is supposed to improve the good things that are there and discourage things that would degrade the waterway. In his opinion the bulkhead improvements, the preservation of a small area of wetlands and the building improvements would contribute positively to the wild and scenic nature of the

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Tuckahoe River and Upper Township. He believes the river is a great resource for the Township and makes living here very pleasurable. He has experienced this part of the Tuckahoe River personally by means of recreational activities. He does not find anything environmentally wrong with the docks or the bulkhead. Also, the wild and scenic river includes existing facilities in other counties too. He believes the applicant has met their burden of proof in terms of the use variances and bulk variances. He was a little uncomfortable with guidance provided by Mr. Abbott to his expert witnesses. When experts give their opinions he wants to hear what they have to say and not be directed by their attorney.

MR. UNSWORTH – He believes this application should not have taken seven meetings and was made more complicated than it needed to be. He concurs with Mr. Shawl's review and stated that it is accurate. He concurs with his specific comments and findings noted during his review. The bulk variances are fairly simple in that most of them exist because the structure was pre-existing and they are keeping the existing setbacks. The lot is unique since it is undersized and has numerous environmental jurisdiction constraints. In regards to the D variance, the location is appropriate for numerous special reasons particularly (B) where the bulkhead has been improved and the structure will be raised above flood elevation; (C) since the building will be kept in its existing footprint and there is the same amount of open space left on the lot; (E) since there are multiple mixed uses in the Tuckahoe area; (G) since there is additional public access provided to the river by the creation of the boat slips and a sewage pump out will be provided to the boats which is an environmental upgrade and the mix of residential; (I) because the improved appearance of the structure and the redevelopment of it also the parking provided; J since they are redeveloping a dilapidated structure and keeping the number of dwelling units and replacing a failing septic system and bulkhead.

Concerns by the opposition included traffic concerns that he believes will be improved by the replacement of the Route 50 bridge; The septic system, bulkhead and docks that have been installed and approved; the landscaping that was disturbed and will be replaced during the Route 50 project. He feels the negative criteria have been met. The variances, if granted would not substantially impair the intent or purpose of the zoning ordinance. There was discussion about the creation of this zone in the ordinance and testimony from Paul Dietrich, Township Engineer, that during the 2001 Master Plan Reexamination, the intent was to grandfather the existing marina but the Township Solicitor informed them they could not grandfather multiple uses on one lot. He is in favor of the application.

MR. PHIFER – He believes the special reasons for granting the D variances include A, B, G, K and I. He believes the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning ordinance. He believes the applicant has met the burden of proof. A lot of the variances needed were pre-existing non-conforming. He does not believe there was a big issue as to whether this property has been a mixed use for many years. He thinks this property has been a mixed use for many years. It is clear that this property has been allowed to exist as a three-unit complex and a marina of some sort. With the removal of the retail store he believes the property is not expanding its use. He would be in favor of the application. In the three years he has been on the Board this application has been the

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most volatile when it comes to testimony by professionals. He had a hard time believing and accepting some of the testimony and he thought it was completely contradictory.

MS. PETROZZA – She concurs with her fellow board members. The Board has heard substantial positive testimony from the public inside and outside of 200 ft. She believes the applicant has satisfied the burden of proof. She has spent a long time reviewing her notes and she is in favor of the application. She has been on the Board a long time and she was extremely disappointed in the opposition.

MR. YOUNG – He concurs with the findings of the Board. The applicant has met the burden of proof for the D variances since affordable rental units in the Township are non-existing. The applicant will create one-bedroom apartments on the river that are affordable along with boat slips. He grew up on the river and there are no slips for rent at this end of the Tuckahoe River. Yanks Board Works does not have rental slips. He finds this was a marina with seven slips at one point. The property was sent to the Zoning Board for an interpretation that he was part of. The interpretation was that this property had never received approvals as a marina, not that it was not a marina. Mr. Graiser was informed he should apply for site plan approval, which he refused to do. He remembers there were always three units. He believes the use is clear and is beneficial to the entire Township as far as open space and recreation. The Board's job is not to listen to personal attacks on applicants or opponents but to look at the property, the structure and base our opinions and findings on that no matter who the applicant is. He was very disheartened with some of the testimony and the personal attacks. He felt threats as to what could happen and why it would happen at the end of these hearings. He found it to be very unprofessional. He has been involved in zoning for 20 years. He has gone through all of his facts and has no doubt that this has been a marina and should be made a marina. The Board is only looking at the expansion of three slips. The adjacent property owned by Mr. Breunig is located approximately the same distance from the side yard as the proposed structure. Mr. Breunig's structure also sits almost three quarters of the way forward of the proposed structure so the effects on his property are minimal when it comes to light, air and open space and views of the river. The new part of the second story would only affect 5 ft of the adjacent property. He would be in favor of the application.

MR. KLEPAC – He concurs with his colleagues. At the close of the last hearing Bruce Breunig provided information on zoning changes, DEP records, tax records, wetland information, water quality protection, photos and historical facts. This is one of the most tedious applications he has heard during his ten-year tenure. He congratulated Mr. Facenda and his expert witnesses as well as the Mr. Abbott and his expert witnesses in providing as much information as possible regarding this application.

MR. PIERSON – Although Mr. Breunig and his representatives have presented evidence stipulating that the site was never a marina with three dwelling units, he does not concur with their conclusions. By their own statements this was an illegal marina with dwelling units. Regardless of legal status they recognized that it did exist. Mr. Young, former zoning officer, clearly supports that it existed. He concurs with the findings by his colleagues. An inspection by Mr. Dietrich on February 24th clearly established that there were three dwellings regardless of not having cabinets, sinks and refrigerators currently installed. It has not been determined when these items were removed or for what

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purpose. A letter with enclosure was presented at the April meeting by Mr. Facenda and submitted by Mr. Abbott clearly stipulates that this site did comprise a marina with dwelling units as far back as the 1930's. Pictures and copies of old deeds provided at the last meeting by Mr. Breunig show a building with what looks like apartments, piers and boats as well as terminology such as buildings, profits and improvements. Correspondence Hobart Young, Zoning Officer at that time, informing Mr. Graiser that he was in violation of the ordinance and that he could go forward and seek approvals was provided as evidence. He believes the burden of proof has been met to establish this was a marina with three dwelling units in the past regardless of its legal status. Mr. Akers gave testimony although it was understood that he is not a professional witness but representing an association that did a study in 2000 that has not been updated since then. There have been many changes since 2000, therefore he believes it is time to reassess their management plan and for the Township to reevaluate their portion of the management plan. The zoning map shows there are several separate zones in Tuckahoe. It is difficult to imagine there would be so many zones and so many restrictions in such a small area. The ordinance does not include marinas as a permitted use in the TR zone. It was a legal opinion that marinas should not be addressed in this zone. The ordinance does allow marinas in the TV (Tuckahoe Village) zoning district. Within a short distance from the site there were various small commercial properties. Mr. Abbott and his team have stated that a large number of variances should automatically deny this application. He finds no stipulations in his previous training or in Cox that confirms this. Each application is heard on its own merit. Further, Mr. Abbott and his team have stated several times that they would fight to the highest levels if the variances were granted. He feels these types of accusations should not sway the individual members of the Board during their final decision process. During previous meetings Mr. Abbott and his team made statements suggesting the applicant is disingenuous and not honest, which during several occasions created unfavorable discourse between the Board and Mr. Facenda and his team. They presented information regarding building code violations that the Construction Officer will have to deal with. The DEP is responsible for dealing with the dock construction. This information was presented to attempt to suggest the applicant was misleading and dishonest. The Board, applicant and others are sworn to tell the truth and the Board must make their determination based on facts and not acquisitions. He believes special reasons 2a, 2b, 2c, 2d, 2e, 2g 2j 2i are satisfied. He also feels that C1 qualifies since a hardship exists and the variances can be granted because of the exceptional shallowness of the lot and the design criteria to meet regulatory standards by the County and State, which has an impact on the front, rear and side yard setbacks. Exceptional topographic feature, the Tuckahoe River, also affects the setbacks. He further believes that the waivers can be granted. The Township has received the environmental assessment that is part of the CAFRA permit process. The concrete curbing will help with drainage on the property. The 25 ft landscape buffer should be put off until the bridge is constructed. He does not believe that the owner has abandoned the use since mere non-use does not constitute abandonment nor has there been an act or failure to retain interest in the property. There has been no perceived intention to abandon the property on the part of the owner. He believes that the request for the variances merely seeks to vindicate the previous non-conforming use and vested rights in

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the property. Additionally the Board needs to consider the Townships Master Plan and the potential for commercial ratables within the Township. He believes this is a reasonable and prudent request and that it will meet the plan goals. He believes that there would be no negative impact to the zoning plan or the public good and is in keeping with the Township Master Plan.

A motion was made by Mr. Klepac and seconded by Mr. Phifer, to grant preliminary and final site plan approval to demolish all or a portion of all existing structures on site and construct and/or renovate existing structures to develop a ten slip marina with associated office and three residential units located on the subject property at 2 Meadowview Lane, Tuckahoe, New Jersey, together with a D1 variance for a use not permitted in a zone, specifically a marina and a multi-family/tri-plex and office with a D1 variance for more than one principal use on a lot, bulk variances for lot area, lot width, lot depth, front, rear and side yard setbacks, building coverage, lot coverage, landscape buffer, lack of curbing in parking lot and non-asphalt parking area, waivers for submission of an environmental assessment of storm water calculations, with the conditions that all development shall be in accordance with the development plan submitted by EDA, consisting of 7 sheets, last revised 2/1/12 and the floor plans and building elevations of Howard Leroy Davis, Licensed Architect, consisting of three sheets, last revised 3/6/12, there shall be no sale of gasoline or boats on site and there shall be no repairs or service of boats on site, there will be no bait and tackle shop developed in conjunction with the marina, the plans will be revised to evidence a roof height no higher than 32 ft, the applicant will be prohibited from storing more than six (6) boats on site and there will be no commercial storage of boats, the boat storage will occur in the designated parking spots and there will be no stacking of boats, at least six parking stalls must remain available for the apartment use, the applicant shall resubmit its septic plan to the Cape May County Health Department for review and approval prior to the issuance of a construction permit, the plan shall be revised so that the above ground holding tank shall be relocated with the proposed trash enclosure, compliance with all standard conditions. In favor: Klepac, Phifer, Shawl, Unsworth, Petrozza, Young, Pierson.

RESOLUTIONS

1. ROBERT DEVER – BLOCK

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

2. DARYL & ANNE MARIE CILLI – BLOCK

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

BILLS

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

PUBLIC PORTION

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

ADJOURNMENT

A motion was made by Mr. Unsworth and seconded by Mr. Young to adjourn the meeting. The meeting was adjourned at 8:44 p.m.

Submitted by,

Shelley Lea