

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
MAY 10, 2012**

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, Matthew Unsworth, Lynn Petrozza, Hobart Young, Susan Adelizzi-Schmidt and Acting Chairman Jeffrey Pierson.

Absent: Joseph Healy, Alistair Lihou and Paul Casaccio.

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

SWEAR IN BOARD PROFESSIONALS

APPROVAL OF THE APRIL 12, 2012 MEETING MINUTES

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

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

Solicitor Marcolongo gave a brief history of the last six meetings. A roll call was taken and it was determined that everyone has attended the meetings or have listened to the recording of any meeting they missed.

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Mr. Klepac had not yet arrived at the meeting, however Mr. Abbott had no objection to beginning the meeting and having him listen to any portion of the meeting that he missed.

Kristopher Facenda, Esquire, was present to represent the applicants. He questioned Joseph J. Raday, P.E., previously sworn.

Mr. Raday testified that Robert Breunig retained him as a traffic expert prior to February 29, 2012. The application was pending at that point. He was aware that Mr. Breunig was opposing the application. In preparation of his report he reviewed the subject property, the 10/13/11, 11/10/11, 1/12/12 and 2/9/12 recording of the meetings. He reviewed the site plan and documents prepared by EDA and the architectural documents by Harold Leroy Davis. He reviewed the application and some other documents in the file of ABR Consultants.

Mr. Facenda asked the basis for referring to the structure as a single-family structure on page 3, Factual Background, of the report. Mr. Raday testified that it must have been in a document in the file.

Mr. Klepac arrived at 7:51 p.m.

Mr. Facenda submitted a copy of the tax assessor record for the subject property. After reviewing the document Mr. Raday indicated that it indicates multifamily 3. He also stated the document indicates there are 3 bedrooms, 3 bathrooms and 3 kitchens. The document shows the year built was 1936. Mr. Raday agreed that based on the document it is safe to say that this is a 3 family unit since 1936. He agreed with Mr. Facenda that Mr. Dietrich has inspected the property and found there are 3 units. This document was marked A-23.

Mr. Facenda stated that the DOT was formed in 1966 so their regulations could not have preceded their entity. Mr. Raday agreed there were 3 units when the DOT came into effect.

Mr. Raday stated that a deed he reviewed stated this was a single-family home. Mr. Abbott explained the deed is between the Graisers and T & R Holdings.

Mr. Raday testified the current width of Meadowview Lane is 12 ft. He is aware that the throat of the road would be widened as part of the DOT improvements. He stated that the applicant is not altering Meadowview Lane as part of its application. Under the RSIS the cartway would be deficient no matter what were proposed.

Mr. Raday testified that anything pertaining to the retail component of his report is no longer applicable. He explained how he did the parking analysis. He feels that a minor access permit is needed from DOT.

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Mr. Facenda addressed some of the factual background items contained in the report. During discussion Mr. Raday testified that he has not looked at any accident reports and did not try to find any. He did not do any traffic counts. There was discussion concerning the site triangle and the reconfiguration of the entrance of Meadowview Lane and if an access permit would be necessary. There was discussion regarding correspondence from the Cape May County Planning Board, dated March 11, 2011, item 2 that indicates an access permit is needed when there is a change of use and a significant increase in traffic. Mr. Raday believes there should be a condition of any approval that the applicants have to notify DOT to see if a permit would be needed.

During questioning by Mr. Abbott, Mr. Raday testified that the deed indicates that Mr. Graiser used the property as his exclusive residence. He is aware of the increase in the size of the structure and the proposed uses. He feels that if approved, this would exasperate an already unsafe intersection by 500% due to certain deficiencies.

Mr. Dietrich stated that the bridge would only be 9 inches higher than it is now. The existing elevation is 14.76 and it is going to 15.52. The proposal is to raise the bridge from the crown of the road toward Corbin City; the Tuckahoe side is staying about the same. The minimum stopping site distance requirements of the State would still be met at the intersection. Sidewalk will be added and the guardrail will be pushed back along with other improvements. He believes the site triangles would better.

During questioning by Mr. Abbott, Mr. Raday testified that the applicant or the Township did not submit a traffic report or impact statement. He believes that a single-family home would be better in regards to safety.

Barbara Allen Woolley Dillon, previously sworn, spoke in regards to the new plan. She submitted a document titled Issues with Development Application, which was marked as Exhibit P-38. She believes that 19 parking spaces are needed. She stated that the proposal is inconsistent with the Master Plan since the Master Plan has taken steps to preserve this corridor along the river.

Bruce E. Breunig, Sr., 21 Glory Road, Marmora, was sworn. Mr. Breunig testified that he has been a resident of Upper Township since 1966. He served on the Zoning Board for over 5 years and was Zoning Officer for 2 years. He is familiar with the subject property. While Mr. Graiser was the owner they made several complaints to the DEP to rein in Mr. Graiser's behavior and actions that he was taking at the property. He is opposed to this application.

Mr. Breunig prepared reports for each of the Board members containing photos, documents and his own personal conclusions and opinions. The report with 5 contents was marked as Exhibit P-40, the document with 3 contents was marked P-41 and the last document was marked P-42. He reviewed each of the documents. He believes that a 10-slip marina would have a negative impact on the river.

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Mr. Breunig stated that they use the property next to the applicants throughout the summer.

Mr. Dietrich informed Mr. Abbott that the docks are now in the configuration approved by DEP as shown in P-40. Mr. Breunig stated the docks are not staggered and has a single access to each dock.

Mr. Breunig testified that his photos show that the previous owner installed docks after purchasing the property without any permits. He stated that the property was stripped of all vegetation when there is an ordinance that requires that you maintain 50%. He stated there are no floating docks in an aerial photo from 1954 or 1987. The one from 2002 shows docks.

Mr. Breunig reviewed Exhibit P-41 that includes previous testimony, definitions, aerial maps and other information for the Board to review. He stated that in 1992 the tax assessor included the apartments. He believes the wetlands were downplayed in the permitting process.

Mr. Breunig reviewed Exhibit P-42. He stated that the property has a single electric meter. He stated that the DEP could not locate the entire Graiser file. He included emails from Dave Fanz of the DEP to Mr. Maffei. This package also includes a 2011 permit from Somers Point as well as photos of All Action Watersports in Somers Point.

The meeting was open to the public.

Dorothy Georgianni, 6 Meadowview Lane, Tuckahoe, was sworn. She testified that the marina was beautiful and she would like to see another marina there. She knew the Graisers when they lived there. She lives next door to Mr. Breunig's summer home. She believes the proposal would enhance the property values. She has lived here for 10 years. She testified that she was inside when the Graisers owned the property. The Graisers lived upstairs and there were 2 apartments downstairs.

Darlene Schweibinz, 1010 Route 610, Petersburg, was sworn. She has been a resident of Upper Township since 1975. She was in the apartments in the 70's. She would like to see the marina restored. She is disabled and has no access to water.

Hearing no further comment the meeting was closed to the public and returned to the Board.

Mr. Dietrich reviewed how the TR zoning district came about. After the river plan was developed they were pushing for the Township to incorporate the Tuckahoe Riverfront zone. Not during the plan endorsement process but during the Master Plan Reexamination in 2001 is when this was discussed and approved. There was also discussion at that time regarding existing marinas in the area. At one point the Township tried to grandfather the marina but the previous Township Solicitor, said the ordinance

could not grandfather two uses so it was kept out. They would be allowed to keep what they had under the pre-existing status. The two-acre zoning under the current ordinance is because of the requirements for landscape buffering and tree preservation. Since this would be considered a pre-existing non-conforming lot under the undersized lot ordinance they would not have to comply with the landscape buffer and tree preservation. The DOT plans call to remove all the vegetation along the roadway embankment and to replace it after the improvements are complete. The dock like material along the perimeter of the bulkhead could impact the last parking stall but he is not certain at this time. That material may have to be relocated or removed.

Mr. Dietrich stated that he believes the proposed number of parking spaces meets the ordinance requirements.

The attorneys gave their closing statements.

Mr. Abbott stated at least 18 variances, less than half an acre where the minimum is 2 acres, a previous zoning board decision where the resolution finds they did not have a legal marina. The applicants did not apply to move the structure, they are still 3 ft from the Breunig property and they are more than doubling the overall cubic volume size of the structure. From their perception they have already spent thousands of dollars on this project as though it was a given that they would be approved. He feels the Board is pushing to grant all the variances in violation of the ordinance and master plan. In recent years the ordinance eliminated marina use. This is a wild and scenic river that is not supposed to have this intensive development. He believes they have misrepresented to various government agencies. They have noted inconsistencies in the plans that they have submitted to various agencies. He thinks the Board should say no. He stated this is a commercial venture to make it as profitable as possible. It will severely be detrimental to his client's property. He feels that coming onto Route 50 at the bottom of the bridge is a dangerous situation. They are highly suspect about the septic field being 75 ft or less from the river. The applicant has destroyed the landscape buffer required in the ordinance. They believe this will be an intensification of use. He believes the applicants should have a single-family dwelling in the middle of the property and up to 4 slips. They are going to fight this since there is no justification and the Board should deny it.

Mr. Facenda stated that the last 5 months have been taken up with the opposition. He stated the applicants are seeking preliminary and final site plan approval together with variances to permit the renovation of this property to include a marina and 3 residential apartments with 10 boat slips. Testimony given by Mr. Leps and Mr. Maffei very clearly established that the relief requested can be granted since there are special reasons for the grant of the requested variance and because the property is very particularly suited for this type of use as it sits directly on the Tuckahoe River. His witnesses have satisfied the negative criteria as to the development. The proposed development is not a substantial detriment to the public good nor does it substantially impair the intent and purpose of the zoning ordinance. The property would be rehabilitated in all respect, a new bulkhead, operational septic system and new docks and piers. Mr. Maffei is familiar with the

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property and has described it in great detail as well as the surrounding uses. Mr. Maffei confirmed the uniqueness of the property being right on the Tuckahoe River. He described the site plan in detail and justified every variance and waiver needed. He testified the application promotes the general welfare because of its particular suitability. He elaborated on this by speaking about the State of New Jersey's policy regarding shoreline resources. His opinion was that the proposed marina and residential uses clearly advance that State policy. The marina use would be consistent with the utilization of the shoreline resources for recreational purposes and that the residential use would also be consistent. He testified that the advancement of the State policy promotes the general welfare, a special reason under the MLUL. Boating, fishing, crabbing, environmental education, sightseeing, historical education are some of the proposed uses. This is a prominent part of Upper Townships history. Most properties in the Township do not enjoy waterfront access. It was stated that the intended development would produce a desirable visual environment with adequate light, air and open space. It was Mr. Maffei's opinion that the requested variances would not impair the intent of the zoning ordinance or zone plan or Master Plan. The applicant has obtained permits from the Army Corp of Engineer, DEP, CAFRA, County, Soil and National Park. He asked the Board vote in favor of the application.

Solicitor Marcolongo will prepare a list of the conditions that have been presented during the meetings. Copies will be forwarded to each of the attorneys. The next hearing on this matter is scheduled for June 14, 2012. There will be no additional evidence or testimony presented. The Board will simply make its findings of facts and vote on the application as presented.

BILLS

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

ADJOURNMENT

A motion to adjourn the meeting was made by Mr. Shawl and approved. The meeting was adjourned at 10:22 p.m.

Submitted by,

Shelley Lea