

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
OCTOBER 11, 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.

CALL TO ORDER

SALUTE TO THE FLAG

ROLL CALL

Present: Ted Klepac, Christopher Phifer, Jeffrey Pierson, Andrew Shawl, Matthew Unsworth, Joseph Healy, Alistair Lihou, Susan Adelizzi-Schmidt and Chair Paul Casaccio.

Absent: Lynn Petrozza and Hobart Young.

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

Mr. Healy left the meeting at this time since there was a quorum present.

SWEAR IN BOARD PROFESSIONALS

APPROVAL OF THE SEPTEMBER 13, 2012 MEETING MINUTES

A motion to adopt the minutes was made by Mr. Pierson and seconded by Mr. Unsworth. In favor: Klepac, Phifer, Pierson, Shawl, Unsworth, Lihou, Adelizzi-Schmidt, Casaccio. Abstain: Healy.

TABLED APPLICATIONS

1. BRETT SCHIEMER – BLOCK 10, LOT 215
2. CHARLES WHITE – BLOCK 840, LOTS 7 & 8

The above applications have been tabled until the November 8, 2012 meeting. The applicants have agreed to waive the tolling of time. No further notice is required.

APPLICATIONS

1. SUSAN MORGAN – BLOCK 477, LOT 9.02 – BA04-12

Applicant is requesting a use variance to operate a hobby/show breeder of Yorkshire Terriers business in the residential zone at 1986 Tuckahoe Road, Petersburg.

Susan Morgan, 1986 Tuckahoe Road, Petersburg, New Jersey, was sworn.

Solicitor Marcolongo stated that the applicant is requesting a D1 use variance for a use not permitted in the zone, specifically the applicant would like to operate a kennel in the R2 zoning district. The applicant must demonstrate special reasons for the granting of the use variance and satisfy the negative criteria, specifically by testifying that the relief requested could be granted without substantial detriment to the public good and without impairing the intent and purpose of the zoning plan and zoning ordinance.

Mrs. Morgan testified that she has been breeding Yorkshire terriers for many years. She does not have a lot of dogs in her house and is anti-kennel. She believes that dogs should live in homes.

She explained that her female dogs live with other people. She gives someone a puppy and they keep the puppy for its entire life. She breeds the puppy several times. She gets the puppies and they get to keep the female dog. She compensates them for any out of pocket expenses. Her puppies for the most part, with few exceptions, are not raised in her home; they are raised in other people's homes. She will make an appointment and drive to their house to show the puppies and make the sale.

Mrs. Morgan explained that she takes the male dog to the female dog's home to breed which is often problematic and results in her having to often due artificial insemination often. She has been doing this for years and has no traffic. She was a volunteer in the Township for 30 years and had more people at her home on a regular basis than she ever will have selling puppies. If she is lucky she may sell three puppies a month. She has never received a complaint from her neighbors. There is no ordinance about the number of dogs allowed in your home. Yorkshires weigh between 3 to 7 pounds.

Mrs. Morgan testified that what she wants to do is bring the female dogs to her home to breed them. She stated that if she has puppies at her home like she occasionally does, she would like to be able to sell the puppies in her own house. Right now she sells them from the home of someone else or in a parking lot or something like that. She does not have a kennel license. She stated that she is also a show breeder. Her dogs go in AKC shows and she just had her first win. She referred to herself as a serious breeder. Her one dog cost \$10,000. She is a hobby breeder and she sells some of the dogs.

Mr. Unsworth referred to a letter from the Cape May County Health Department dated March 27, 2012 that discusses kennel licenses. Solicitor Marcolongo stated that if the applicant is operating a kennel she is required to obtain a license through Upper Township. Prior to

obtaining the license Mrs. Morgan must first go through an inspection certification through the County. He stated that under the State regulations a kennel means an establishment wherein or whereon the business of boarding or selling dogs or breeding dogs for sale is carried on, except a pet shop.

Mrs. Morgan informed the Board that a group of rescue people that she has never met have made complaints about her. The health inspector came to her house and told her she was considered a kennel since she sells and breeds dogs.

Shelley Lea, Zoning Officer, testified that the Township has a kennel license and that it can be applied for at the Clerk's Office. Solicitor Marcolongo reiterated that a kennel license is needed for selling and/or breeding dogs. Mrs. Morgan agreed that she does both. Mrs. Morgan further agreed that she currently operates a kennel and wants to expand this operation by being able to do certain things at her property. She stated that if denied she could continue to breed dogs and have their puppies at another location and continue doing what she has always done like meeting people in parking lots.

During questions by the Chairman Mrs. Morgan testified that she breeds and sells dogs but does not board dogs. She agreed the selling is taking place in parking lots and in the homes of others. She testified that breeding is also taking place in other people's homes. There is no breeding taking place in her home. Usually the puppies stay with the family until they are sold but occasionally the puppies will be brought to her home. She owns three female dogs of her own that she breeds.

Mr. Shawl stated that if the Board approves a kennel use at this site it could remain a kennel unless the use is abandoned. The variance would run with the property and even if the property were sold it could continue to be used as a kennel. He asked what types of safety features have been added to the home so that the dogs cannot get loose. Mrs. Morgan testified there is a doggie door in the back door that goes onto a covered deck. There are two doors; one goes to a small yard used by the dogs and a larger yard. She said that the dogs don't get out. If the application is approved they will install double gates.

Mrs. Morgan testified that her business is getting smaller. If she is fortunate she sells three puppies a month. It is a rare that someone comes and does not buy a puppy. She stated that the buyer sees a picture and they talk on the phone. They do not come to see the puppy until it has been to the vet. She doesn't ship her puppies or do internet sales. The only time that she has sold her puppies to anyone outside of driving distance were on two occasions where she traded a top dog with a show breeder.

Mrs. Morgan stated that she is doing less breeding because of her age but when she does breed she wants to be able to bring the female to the male. She wants to get to the point where she only does a couple of litters a year but right now she breeds a couple of dogs a month. She explained that she does not believe in giving a dog away when it is finished breeding.

Mrs. Morgan explained that the female would come to breed and then go home. When it is time for them to have puppies she goes to their house to deliver the puppies. There is no increased traffic. There are instances when she will bring the puppies to her house for a couple days.

When asked how many dogs are at her home Mrs. Morgan stated that the Zoning Officer came to her house unannounced without an appointment. She relied on the testimony given by the Zoning Office.

Ms. Lea testified that during her inspection on Monday, October 8th there were six dogs that belonged to Mrs. Morgan. There was another dog that belongs to her sister and another that belongs to her daughter. There was a male dog in a cage that she said she was borrowing from a friend for breeding and a dog she was watching while its owners were away. There were seven cages in a separate room, three of the cages each held three puppies each.

Mrs. Morgan testified there is an apartment in her home where her sister lives and one of the dogs is hers. Six of the puppies belong to her friend who lives in Georgia. She is watching them while she goes away. She met her friend half way and drove the puppies to her house. The number of dogs in her house changes from time to time. Most of her dogs are licensed with the Township.

Mr. Lihou stated that he has concerns that he use variance to allow a kennel would go with the property since home occupations are not permitted in this zone.

Solicitor Marcolongo read the definition of abandonment and case law pertaining to abandonment. He confirmed that the variance runs with the land.

Mr. Dietrich testified that the main part of the house is approximately 1,700 sq. ft. The apartment is approximately 700 sq. ft.

Mrs. Morgan stated that if not approved she would continue to sell puppies from people's homes and in parking lots. She stated that other residents of the Township breed and sell puppies. Some of the Board members commented that this is still operating a business.

When asked by Mr. Pierson how this business would benefit the Township or her neighbor Mrs. Morgan responded it would not in no way at all benefit the Township. It would however allow her to legally raise puppies which are her passion. She confirmed that she has a website with pictures of the dogs for sale on it. Most of the puppies are hers but she also advertises for her friends on her website.

Solicitor Marcolongo stated that the application is to permit an expansion of a kennel that the applicant has already admitting to operating to include bringing the dogs to her property,

breeding and selling. If the use variance is not granted the Zoning Officer would take action as to what she is doing now.

Mr. Pierson stated that the applicant has admitted that she already boards dogs. She has brought dogs back from Georgia whether she is being paid or not.

Mr. Shawl asked about the applicant's driveway and the chain link fence since no site plan details have been provided other than an old survey. Mrs. Morgan testified the fence is 4 ft. high. There is another fence around the pool area. The driveway is very wide and several cars can be parked in front of the garage. She doesn't propose any changes to the exterior of the house. Mrs. Morgan testified that she feels the size of the house is sufficient for the number of dogs she anticipates having. She feels the vegetated buffer is sufficient.

Alfred Morgan, 1986 Tuckahoe Road, Petersburg, was sworn. Mr. Morgan testified the dog yard is 20' x 40'.

Mrs. Morgan testified that she has three female dogs of her own that she breeds. These dogs live with her and so do their puppies. There are times when she has to bring puppies to her home if they are sick or for some other reason. She does not do grooming or obedience at her home. She markets puppies for other breeders on her website. She explained how she gave a champion sire puppy away to a friend in Maine that is worth thousands of dollars. Her friend shows him and he becomes an AKC champion. In return she is able to use the dog for breeding.

Mr. Lihou commented that the applicant still has not proven that the positive criteria have been met. She has not shown an inherent benefit to the Township.

Mr. Unsworth is concerned about the number and size of dogs on the property and that the exterior of the property.

Mr. Morgan testified there is a lot of confusion as to what is going on. His wife just wants to be able to sell a dog occasionally.

Mr. Shawl stated that the applicant is requesting a site plan waiver and is not providing certain site plan issues. Solicitor Marcolongo stated that the applicant is requesting a waiver since she believes the change of use would have minimal construction and would not affect, drainage, parking traffic, lighting, etc. Mr. Dietrich testified that he believes the applicant meets the criteria for a site plan waiver. Mr. Casaccio has concerns about the hours of operation.

There was a short break at this time. Ms. Adelizzi-Schmidt left the meeting at this time.

The meeting was open to the public inside of 200 feet.

Elaine Sorrentino, 1955 Tuckahoe Road, was sworn. Ms. Sorrentino is concerned about the number of dogs on the property. She discussed puppy pool parties at the Morgan's where the driveway is full and cars line the road. She disagrees that Mrs. Morgan's business would have no effect on the neighbors and is concerned about the business expanding. She said that Mrs. Morgan contradicts herself when she said that she sells three puppies a month then later says she has three litters a month. She is concerned about who this property may be transferred to at some point. The fact that the variance runs with the land opens the potential for a full scale kennel with noisy dogs. She feels the Morgan's are being deceptive in asking for permission for what exists as an illegal kennel. She referred to the signage at the property owned by the Morgan's in Corbin City. She herself is a dog trainer and dog owner. She understands Mrs. Morgan's love for dogs but breeding and selling dogs does not have to be a part of it. Mrs. Morgan indicated on her application that she runs a private rescue but when asked what other operations were being run out of the house this was not brought up.

Gail Haberman, Swainton, New Jersey, was sworn. She is the owner of 2000 Tuckahoe Road. Her son lives in the house and you can hear the dogs barking. She would like a vegetated buffer if approved. She is opposed to the application.

The meeting was open to the public outside of 200 feet.

Diane Veteri, 637 5th Avenue, Clementon, New Jersey, was sworn. Mrs. Veteri objects to granting a variance for a kennel. Mrs. Morgan has been running an illegal breeding program at this property. She does a lot of breeding at the property and not just at other houses. She said that during testimony Mrs. Morgan stated that she never gives her dogs away which a lie. She gives them away when they are done breeding. Mrs. Morgan's website shows all the dogs that she sells and it is more than three a month. She stated that she belongs to a rescue organization that tries to shut down illegal breeders. She submitted a binder containing nine exhibits. Solicitor Marcolongo marked this as P-1. Mrs. Morgan reviewed the exhibit and had no objections. She stated that Mrs. Morgan is not a hobby breeder since sometimes she has three to four litters a month. She breeds most of her dogs twice a year. She stated that Mrs. Morgan is running an illegal business from her home without the appropriate licenses. She does not believe it is appropriate to have this many dogs in a house this size and in a residential zone. She stated that Mrs. Morgan should have medical records for all the dogs. She stated that Mrs. Morgan does not drive half way to meet her friend. The dogs are shipped and she goes to the airport to pick up the dogs and sells them at her house. She picked up puppies at the airport just two months ago.

Dee Bailey, 2015 Tuckahoe Road, Petersburg, was sworn. Mrs. Bailey has concerns about a kennel being established and possibly being abused by someone that purchases it. She objects to the variance being granted to operate an existing illegal business in a residential zone. She feels that selling three puppies a month is a lot of puppies. She has stated that she boards dogs and has three females that she breeds. Mrs. Morgan has also stated that she will breed dogs no matter what. She has noticed from time to time at least 6 to 8 cars in her driveway.

Rob Vicario, 1983 Tuckahoe Road, Petersburg, was sworn. Mr. Vicario testified he has known the Morgan's since 2000. He does not feel the proposed use would hurt the neighborhood. There are dogs for sale signs in the Township now. He feels stipulations on signs would be a good idea in case the property was sold.

Mr. Rosenberg, 65 W. Millbrook Avenue, Woodstown, was sworn. Mr. Rosenberg stated that it sounds like the main problem is what will happen if the Morgan's leave and someone else comes in and expands the business. He has three dogs that belonged to Mrs. Morgan. Mrs. Morgan comes to their home whenever she is needed. She comes to their home to deliver puppies and give vaccines. She has met people at their home and sold puppies. To his knowledge she has never sold a dog from her home.

Bernadette Wynne, 832 Virginia Avenue, Deptford, was sworn. She has known Mrs. Morgan for 50 years. She addressed a comment that was made about the number of cars in the driveway. There are a lot of cars since Mrs. Morgan has a large family as well as personal vehicles and her kid's cars. She has one of Mrs. Morgan's dogs.

Shannon Morgan, 1986 Tuckahoe Road, Petersburg, was sworn. Ms. Morgan stated there are four adults in the house that drive cars. There are three inoperable cars there currently. They are a close family and there are always cars in the driveway.

Mrs. Morgan testified that she did not pick up puppies at the airport two months ago. When you breed puppies you might get one puppy out of the litter that is considered the perfect yorkie that you can show. Hobby breeders sell their puppies. She shows dogs and just had her first champion and has another in the show ring. She is also a kennel. She stated that you may keep a few puppies for six months before you even decide if the bite and the knees are right among other things.

The Board discussed what type of reasonable conditions could be included if the variance were approved. Mr. Dietrich stated that unannounced compliance inspections would be the true control the Board could have to verify the quantity for compliance.

The Board Chairman offered the applicant five minutes to determine positive and negative criteria and conditions of approval that would help in her application. Mr. Klepac commented that the Board should proceed with its findings and vote on the application. Solicitor Marcolongo stated that the application has been pending for 6 months and a notice of violation has been pending. This matter needs to be resolved. Mrs. Morgan left the room for 5 minutes.

RESOLUTIONS

1. Jim & Betty Coombs – Block 834, lot 2 – BA10-12

A motion to adopt the Resolution was made by Mr. Unsworth, seconded by Mr. Pierson, and approved.

BILLS

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

The Board went off the record at 10:15 p.m. until the applicant returned at 10:20 p.m.

MORGAN APPLICATION CONTINUED

Mrs. Morgan proposed hours of operation to be by appointment only noon until 6 p.m. seven days a week. There would be no physical change to the outside such as dog runs or cages. There would be no signage. She would limit the area for the dogs to the 20' x 40' fenced area in the rear and the covered deck. She would limit the breed of dog to only yorkies. She agrees with unannounced inspections of the property. She believes that her rescue work is a benefit since she finds homes for dogs and makes their lives better. She would not board dogs for profit. She has also started a brand new nationwide non-profit organization that will make a lot of sick kids happy.

Mr. Dietrich stated that an updated and more accurate survey would be needed to show the location of the fenced area.

The Board gave their findings of fact.

MR. UNSWORTH – Susan Morgan of 1986 Tuckahoe Road in Petersburg, New Jersey, Block 477, Lot 9.02 is requesting a use variance for a kennel in an R2 zone and a site plan waiver. The applicant operates a small breeding kennel out of her home and would like to continue to do so. She is before the Board since a complaint was made to the Township. There is no evidence of a kennel from the outside. The neighbors are generally ok with the operation as it is. There was public comment both for and against the application. He feels the applicant meets the positive criteria with the rescue work and the non-profit organization she has formed. He does not believe there is any negative impact on the neighborhood or any township ordinance. With the conditions being offered he is in favor of the application.

MR. PIERSON - He stated that Mrs. Morgan is a nice person with great intentions, however he has concerns about sales, boarding, marketing dogs for herself and others. She has a private rescue. In absence of a local ordinance he is relying on the definition by the State. In his mind the applicant has not proven any special reasons and does not see where any general welfare is being served other than the rescue of animals. He does not feel the use fits in the residential neighborhood.

MR. KLEPAC – He concurs. Mr. & Mrs. Morgan represented themselves. He commends Mrs. Morgan for her positive community service and love for animals. He agrees with Mr. Pierson that a commercial business is being operated in residential zone.

MR. SHAWL – The applicant has testified that the dogs don't escape from the property and that the traffic due to puppy sales is minimal. She says that she sells an average of three puppies a month. The internet is used to market puppies. The applicant's lot is over one acre with over 140 ft. of road frontage. There is a large driveway with sufficient parking for the traffic that was described. The applicant was not sure how many dogs would be there at any one time. The house is approximately 2,000 sq. ft. There is no ordinance limiting the number of pets. The applicant testified there would be no benefit to the Township by allowing the variance. The house is located 100 ft. off the road. Appropriate measures are taken to keep the dogs in the yard. There are conditions proposed to limit the area the dogs can use outside. The applicant testified that noise is not a problem. There was testimony by a neighbor that there were puppy pool parties during the summer that generate a lot of traffic. Another neighbor feels that signs would have a negative impact on the neighborhood. There was testimony that dogs could be heard at the neighbor's house and that a buffer was desirable. There was testimony that the house could be too small for the number of dogs inside, however the county had no concern about the number of dogs. Mrs. Morgan appears to be a compassionate pet owner. There are people outside of 200 ft. that have her dogs in their homes that testified to her character. He does not believe that the applicant has met the burden of proof under the special reasons sufficient to grant this variance.

MR. PHIFER ~ He cannot find any special reasons that allow him to vote in a positive manner.

MR. HEALY ~ He commends the applicant for her rescue work and her love for animals. He does not believe that Mr. & Mrs. Morgan have shown enough special reasons to grant the application.

CHAIRM CASACCIO ~ He concurs with his colleagues. He has to follow the land use law and finds the required special reasons have not been met. He feels this would be detrimental to the zoning plan and the zoning ordinance since it is a business in a residential zone.

A motion was made by Mr. Unsworth and seconded by Mr. Pierson to grant the use variance and site plan waiver to operate a kennel/commercial enterprise in the R2 zoning district with the condition the applicant consent to unannounced inspections by the zoning officer, no exterior changes made to the building so that it continues to look like a residential property, the hours of operation would be noon until 6 p.m. seven days a week by appointment only, there would be no signage, the dogs would be limited to the 40' x 20' fenced area in the rear and the covered porch and inside the house, the applicant must obtain an existing conditions survey, the applicant would be limited to breeding, boarding and sale of yorkies, there would be no exterior cages, dog houses and dog runs, if any boarding does take place it would not be for profit. In favor: Unsworth. Opposed: Klepac, Phifer, Pierson, Shawl, Healy and Casaccio.

DISCUSSION

Solicitor Marcolongo stated that the Chairman asked him to research the pros and cons of a consolidated board. The Township would be eligible to combine the Planning Board and Zoning Board since the population is less than 15,000. Cox indicates there is no evidence of saving money by combining boards. Combining boards benefits small towns that are having problems with getting volunteers. In a combined board the entire board is appointed by the Mayor. If there are two boards the Mayor would appoint the planning board and the entire governing body appoints the zoning board members. By combining the boards there would be less people bringing new ideas to the table and less input as to what is going on in the community. In all likelihood the combined board would be having two or more meetings per month since there would still be the same amount of work. Some members could resign since there are too many meetings

In his opinion it is not a good idea to consolidate the two boards.

ADJOURNMENT

A motion to adjourn the meeting was made by Mr. Phifer. The meeting was adjourned at 10:50 p.m.

Submitted by,

Shelley Lea