

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
DECEMBER 12, 2013**

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

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

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

APPROVAL OF THE NOVEMBER 14, 2013 MEETING MINUTES

A motion to approve the minutes was made by Mr. Pierson, seconded by Mr. Unsworth, and approved.

APPROVAL OF THE 2014 MEETING DATES

A motion to approve the meeting dates was made by Ms. Adelizzi-Schmidt, seconded by Mr. Pierson, and approved. Meetings will be held on the second Thursday of each month at 7:30 p.m.

SWEAR IN PAUL DIETRICH AND SHELLEY LEA

APPLICATIONS

1. TIMOTHY AND CAROL ANN McCANN – BLOCK 508, LOTS 1 THROUGH 13 – BA14-13

Applicants are requesting a variance to allow a detached garage in the front yard and the distance between the house and the garage at 341 Union Avenue, Marmora.

Timothy McCann and Carol Ann McCann of 341 Union Road in Marmora were sworn along with Lance Landgraf, Licensed Planner.

Mr. Landgraf testified there are 13 separate parcels and that the applicants agree to consolidate them into one lot. The property is located in the R2 zoning district. The detached garage that was constructed about one year ago does not meet the front yard setback on unimproved Mistletoe Avenue. He referred to a survey by Robert Prettyman, dated August 5, 2013 showing the existing single-family dwelling and detached garage. He also referred to an aerial of the site from 2012.

Mr. Landgraf believed that a rear yard setback variance would be needed, however *section 20-5.6 Nonconforming Uses, Structures and Lots* states that rear and side yard setback for an accessory building on an undersized lot can be reduced to 5 ft. He testified the garage is used for storage. He believes this is a C1 hardship variance since the garage could be located in a front yard. He testified that the garage does not impact the neighbors or the character of the neighborhood. The garage fits two vehicles and is approximately 700 square feet.

There was discussion about vacating a portion of Mistletoe Avenue.

The meeting was open to the public. Hearing no response the Board gave findings of fact.

MR. UNSWORTH – Timothy and Carol Ann McCann are the owners of 341 Union Avenue in Marmora. The detached garage on the property exceeds the required setbacks. The applicants require a front yard setback variance on Mistletoe Avenue and the distance between structures to allow the garage to be 12 ft. from the house where 15 ft. is required. The property fronts on three streets, Union Avenue, unimproved Mistletoe Avenue and Oakland Avenue. The Township Engineer would recommend vacation of Mistletoe Avenue as long as it does not impact the properties behind this property. The property backs up to the power lines. Having three front yards is a hardship since it is impossible to meet all three front yard setbacks. The applicants are willing to consolidate the 13 lots into 1 lot. They agree to request Township Committee vacate the road as discussed. There was discussion as to what the separation between the buildings is for. The fire code calls for 10 ft. separation so there should not be a safety concern. He is in favor of the application since there is no negative impact to the neighbors.

MR. SHAWL – There was no public comment. He finds the garage does not have a negative impact on the zoning plan or zoning ordinance.

MR. PHIFER – He finds this is an extraordinary situation. He does not believe this will have any negative effects.

MR. LIHOU – He finds both the positive and negative criteria have been met.

MR. PIERSON – He agrees with his colleagues. The applicants have demonstrated that the garage does not violate any traditional zoning purposes such as light, air and open space as shown in 40:55D-2 paragraph c.

MS. ADELIZZI-SCHMIDT – She finds the garage does not create any negative impact.

MR. HEALY – He concurs.

MR. CASACCIO – This is a unique lot due to the three front yards.

A motion was made by Mr. Pierson and seconded by Mr. Shawl, to grant the variances with the condition that the lots are consolidated by a deed of consolidation, a request is made to the Township Clerk to vacate Mistletoe Avenue by January 31, 2014 and the standard conditions. In favor: Phifer, Pierson, Shawl, Unsworth, Healy, Lihou, Casaccio.

2. FRANCES D. EIDEN – BLOCK 845, LOT 20 – BA17-13

Applicant is requesting a variance to allow a shed in the front yard and a side yard setback variance at 21 E. Webster Avenue, Strathmere.

Frances Eiden and Virginia Eiden of 21 E. Webster Avenue, Strathmere, were sworn. Mr. Eiden stated that they are requesting a side yard setback variance to allow a 3 ft. side yard setback where 6 ft. is required. The house also maintains a 3 ft. side yard setback. Photos of the subject property and the shed were submitted as part of the zoning application. The photos also show the locations of other shed in the neighborhood. He testified that the existing house sits far back on the property leaving no room for a shed.

Mr. Eiden further testified there is only 3 ft. from the rear of the house to the property line. He stated that the driveway and septic are in the front yard. The shed was placed on the property about 3 months ago. The shed and the house are a similar color and aesthetically pleasing.

Mr. Dietrich testified that the photos show the shed is setback so that it is not located in front of the neighbor's houses.

Mr. Lihou testified he went to the site and saw that this is the best and only location for the shed. The shed sits back far enough so that it doesn't block the view.

The meeting was open to the public. Hearing no response the meeting returned to the Board for findings of fact.

MR. UNSWORTH – Frances and Virginia Eiden are the owners of Block 835, Lot 20. The applicants are seeking relief to allow an accessory structure in their front yard and a variance to allow a 3 ft. side yard setback where 6 ft. is required. The property is unique. The house sits well to the rear of the property and there is not enough room in the rear for the shed. The septic and driveway are also located in the front yard and limit the potential locations for the shed. The color of the shed is similar to the color of the house. He finds the location of the shed is appropriate. There was no public comment. There is no detriment to the public good.

MR. SHAWL – He concurs. He finds there is no impact to the intent and purpose of the zoning plan.

MR. PHIFER – Nothing to add.

MR. LIHOU – Nothing to add.

MR. PIERSON – He finds the application can be granted using 40:55D-2 c since the shed will not negatively impact the light, air or open space and because of the uniqueness of Strathmere.

MS. ADELIZZI-SCHMIDT – She finds there is no detriment to the public.

MR. HEALY – Nothing to add.

MR. CASACCIO – The applicant agrees to move the shed if the house was ever moved closer to the road.

A motion was made by Mr. Shawl and seconded by Mr. Pierson to grant the variances as requested with the standard conditions. In favor: Phifer, Pierson, Shawl, Unsworth, Healy, Lihou, Casaccio.

3. CHARLES & TRACIE ZUSCHNITT – BLOCK 565.03, LOT 82.04 – BA18-13

Applications are requesting a variance to allow the height of a detached garage to be 24.67 ft. where 20 ft. is permitted at 10 MGM Way, Seaville.

Arthur T. Ford, III, Esquire, represented the applicants. Charles Zuschnitt, 10 MGM Way, Seaville, New Jersey, was sworn.

Mr. Zuschnitt testified he purchased the property in 2006. They do not have a basement and have limited storage. He proposes to construct a detached garage in the rear of his property as shown on the variance plan prepared by Stephen C. Martinelli, last revised 9/24/13. The proposed garage meets the bulk requirements for the “R” Center Residential Zone except for the height. He described the photos, aerial photo and google maps included with the application. They plan to remove only two trees on the property. The proposed garage will look like the elevations that were supplied by the applicant. The proposed 2 story garage would be 24.67 ft. tall and would have electric. They picked this particular A-frame style garage since the pitch of the roof conforms with their existing house and other homes in the neighborhood. He stated that the garage would not have any negative effect on light, air or open space.

Mr. Dietrich suggested a condition of approval be that the second floor cannot be converted to habitable space.

The meeting was open to the public. Hearing no comment the meeting returned to the Board for findings of fact.

MR. UNSWORTH – Mr. & Mrs. Zuschnitt, Block 565.03, Lot 82.04, are the owners of a large lot on MGM Way that is adjacent to a dormant quarry. They are proposing to build a detached garage that exceeds the permitted 20 ft. building height. The proposed building height is 24.67 ft. They meet all the other bulk requirements. They could have made the area of the garage larger but chose a second floor instead. The elevations provided show an attractive accessory structure consistent with their principal structure and the neighborhood. The applicants do not have a basement in their home and

currently lack storage. They have agreed to a condition that the space above the garage would not be habitable. There was no public comment. He is in favor of granting the application as proposed since the garage would not have a detriment to the public and would be aesthetically pleasing to the neighborhood.

MR. SHAWL – He concurs.

MR. PHIFER – Nothing to add.

MR. LIHOU – He agrees

MR. PIERSON – He agrees with his colleagues. He finds there are some exceptional topographic features that justify the relief needed for the height of the structure per 40:55D70 c- 1 (b). Detailed plans were submitted that conform to the house and the neighborhood. The plan provides for light, air and open space.

MS. ADELIZZI-SCHMIDT – Nothing to add.

MR. HEALY – He finds the application should be granted since there is no detriment to the neighborhood.

MR. CASACCIO – The applicant has agreed the second floor would be used for storage only.

A motion was made by Mr. Pierson and seconded by Mr. Unsworth to grant the variance for the height of the accessory structure with the condition that the second floor may not be converted into habitable space. In favor: Phifer, Pierson, Shawl, Unsworth, Healy, Lihou, Casaccio.

4. GLENN SHEELER – BLOCK 638, LOT 5 – BA19-13

Applicant is requesting a minor subdivision and a use variance to allow two residential uses on one lot at 301 Butter Road in Palermo.

Glenn Sheeler, 301 Butter Road, Palermo, New Jersey, was sworn along with Stephen Fillipone, Professional Engineer and Planner.

Mr. Fillipone testified the subject property is approximately 2.5 acres and is located in the “R” Center Residential Zone. In 1993 the Board approved an application involving a single-family dwelling and a detached garage with a second floor apartment and attached carport on this property. The merits of the application are included in Resolution BA27-92 that was submitted as part of the application. Mr. Sheeler’s parents live in the house and his son lives in the apartment.

Mr. Fillipone explained the applicant proposes to subdivide the lot and create a 40,614 sq. ft. lot which is shown as proposed lot 5.02 on the EDA plan dated 9/30/13 and revised 11/19/13. Mr. Sheeler seeks to construct a single-family dwelling for himself on the lot. Both lots would conform to the bulk standards. He believes the variance can be granted using 40:55D-2 e, g and m.

Mr. Sheeler testified that the portion shown as proposed lot 5.02 is vegetated and has not been used for anything other than playing baseball. To the right of the lot is the telephone switching facility.

Mr. Dietrich stated that the application requires approval from the Cape May County Planning Board and Health Department approval is needed for the septic.

The meeting was open to the public. Hearing no response the meeting returned to the Board for findings of fact.

MR. UNSWORTH – Glenn Sheeler is the owner of the subject property at 301 Butter Road, Block 638, Lot 5. Mr. Sheeler proposes a minor subdivision that would create lots 5.01 and 5.02. Lot 5 currently contains a house and a detached garage with a second floor apartment and attached carport. The applicant received approvals from the Board in 1993 for the expansion of a non-conforming use to add a carport to the garage. His parents and son live in the buildings. Proposed lot 5.02 meets the bulk requirements in this zone. There was no public comment. Proposed lot 5.01 would be approximately 1.5 acres and is not overly encumbered by the existing structures. This is a unique application and has received variance relief in the past. He finds the lot is large enough to cut off 40,614 sq. ft.

MR. SHAWL – He concurs with the testimony given that three special reasons apply for granting the variance.

MR. PHIFER – He agrees that special reasons e, g and m apply.

MR. LIHOU – He agrees with what has been stated.

MR. PIERSON – He concurs with his colleagues. He also believes that special reason c applies.

MR. HEALY – He finds the subdivision could be granted without any negative impact.

MS. ADELIZZI –SCHMIDT – Nothing to add.

MR. CASACCIO – He concurs. The variances are pre-existing and previously approved.

A motion was made by Mr. Unsworth and seconded by Mr. Pierson to grant the use variance and minor subdivision with the standard conditions. In favor: Phifer, Pierson, Shawl, Unsworth, Healy, Lihou, Schmidt, Casaccio.

5. OAK RIDGE RESORT CONDOMINIUM ASSOCIATION, INC. – BLOCK 600, LOT 62 – BA20-13

Application is for a use variance for the expansion of a non-conforming use and site plan waiver to replace a pavilion at 516 Route US 9 South in Marmora.

James E. Moore, Esquire, represented the applicants. The site is 34 acres and contains 240 condo sites. The property is in the “R” Center Residential zone. The applicants seek to replace an existing 25.5 ft. x 43 ft. open air pavilion in the campgrounds recreation area with a new 25 ft. x 60 ft. pavilion. The new 1,500 sq. ft. pavilion would be 403 sq.

ft. larger than the existing 1,097 sq. ft. pavilion. The applicant is requesting a use variance

for expansion of a non-conforming use since campgrounds are not a permitted use in this zone.

Donald Harry Parks, Jr. from Gibson Associates, PA and John Hadidian, 8 Marla's Hill Drive, Marmora, were sworn.

Mr. Hadidian testified he is the business manager for Oak Ridge Resort. He believes the existing pavilion was built in the 1960's. They noticed this summer the pavilion was rotted and very dangerous. The pavilion was roped off and Gibson Associates was contacted. Gibson's prepared a report indicating that the structure was not safe. They have removed the structure and want to build a new one in the same location.

Mr. Parks testified he is a licensed professional engineer. He prepared the plot plan dated 10-02-13. He testified the original pavilion was 40 ft. long and the proposed pavilion is 40 ft. long. He feels the expansion is minimal. The structure will be pre-engineered. The proposed structure would not have an adverse impact on the drainage, parking or other site considerations. The structure would provide light, air and open space and would be similar to what was there originally. The pavilion would not negatively impact the public good or the zoning plan. The height of the structure is approximately 14 ft. The closest property line is 142.9 ft. People would get to the structure on foot or by using the access drive. There would be picnic tables under the pavilion.

Mr. Pierson stated that he is very familiar with the pavilion. There are times when there are large crowds and the proposed structure would better meet their needs. He feels this would be a benefit to the campground. He also stated that the location of the pavilion would not have any negative impact.

Ms. Adelizzi-Schmidt commented that the proposed structure appears to be aesthetically pleasing.

Mr. Dietrich testified that the application meets the requirements for a site plan waiver.

The meeting was open to the public. Hearing no response the meeting returned to the Board for findings of fact.

MR. UNSWORTH – Oak Ridge Condominium Associates, Inc. are the owners of the subject property at Block 600, Lot 62, 516 Route US 9 South in Marmora. They are asking for a site plan waiver and a use variance for the expansion of a non-conforming use to replace an open air pavilion in the campground. No bulk variances needed. The proposed structure is approximately 25% larger than the previous structure. The old structure was in disrepair and became a safety concern. There was no public comment.

The site plan waiver they are requesting meets the ordinance requirements. The new structure is an aesthetic improvement to the campground and is a much safer structure. MR. SHAWL – Testimony was given that the pavilion would not have an adverse impact on drainage, lighting, traffic circulation, and other site details. The nearest property line is 142.9 feet. There was no public comment.

MR. PHIFER – He believes that c, I and k apply.

MR. LIHOU – Nothing to add.

MR. PIERSON – He concurs with his colleagues. He is in support of the structure.

MS. ADELIZZI-SCHMIDT – She would be in favor of the application.

MR. HEALY – He concurs.

MR. CASACCIO – He concurs.

A motion was made by Mr. Shawl and seconded by Mr. Unsworth to approve the site plan waiver and use variance with the standard conditions. In favor: Phifer, Pierson, Shawl, Unsworth, Healy, Lihou, Casaccio.

RESOLUTIONS

1. PAUL & LYNN TIBBITTS – BLOCK 567, LOT 45.16 – BA06-13

A motion to adopt the resolution was made by Mr. Unsworth, seconded by Mr. Pierson, and approved. Abstain: Lihou, Adelizzi-Schmidt.

2. CURTIS CORSON JR. – BLOCK 559, LOT 22 – BA12-13

A motion to adopt the resolution was made by Mr. Unsworth, seconded by Mr. Pierson, and approved. Abstain: Lihou, Adelizzi-Schmidt.

BILLS

A motion to pay the bills was made by Mr. Pierson, seconded by Ms. Adelizzi-Schmidt and approved.

ADJOURNMENT

A motion to adjourn the meeting was made by Mr Unsworth, seconded by Mr. Pierson, and approved. The meeting was adjourned at 8:33 p.m.

Submitted by,

Shelley Lea