

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
MAY 9, 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, Hobart Young and Paul Casaccio.

Absent: Lynn Petrozza, Alistair Lihou, Susan Adelizzi-Schmidt and Brian McCoy.

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

**SWEAR IN BOARD PROFESSIONALS**

**APPLICATIONS**

1. MPS LANDHOLDERS LLC – BLOCK 479, LOT 46 – BA13-12

Applicants are requesting variances for lot frontage and for no improved road frontage to construct a single-family dwelling at 501 Willets Road, Marmora.

Michael Fusco, Esquire, represented the applicants. Mr. Fusco explained this is the exact same plan that the Board approved in 2007. The application was extended three times.

Mr. Fusco stated the property fronts on a 10 ft. gravel road and requires a variance for frontage. Relief is also needed from NJSA 40:55D-35 which requires all lots to abut a street. NJSA40:55D-36 indicates that the Zoning Board can provide relief if emergency vehicles can access the site. A copy of the Resolution from 2007 was made part of the application. The applicant is willing to accept the same conditions of approval as in the previous approval.

John E. Halbruner, Professional Engineer and Registered Architect with Hyland Design Group, was sworn. Mr. Halbruner testified the application involves a large tract in the Conservation zone. The wetlands on the property and a 150 ft. wetland buffer results in a significantly diminished buildable portion. The lot conforms to the bulk requirements

except for minimum lot frontage. The lot does not front on an improved road. Access to the site is provided by a dirt and gravel road off of Essex Avenue. This 10 ft. wide road services four other properties, three have single-family residences. Relief is needed since the lot does not front on an improved street. He believes there is reasonable access for emergency vehicles. He further believes that the proposed improvements would make it easier for emergency vehicles to turn around.

Mr. Young would like to see a horseshow driveway on the property since the road is so narrow. Mr. Halbruner referred to a condition in the prior approval that the plans be reviewed and approved by the Rescue Squad and the Marmora Volunteer Fire Company.

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

MR. UNSWORTH – The applicants MPS Landholders are the owners of 501 Willets Road, Block 479, Lot 46 in Marmora. The applicants have been before the board previously with the exact same application. They have used their three permitted extensions. They previously agreed to improve Willets Road as well as other conditions shown in the resolution. The same conditions would apply if approved. Mr. Halbruner testified that he feels there is reasonable access through the existing dirt road. There was no public comment. He would be in favor of the application.

MR. PIERSON – He concurs. He feels the variances could be granted without any detriment to the public and would not impair the intent and purpose of the zoning plan and zoning ordinance. He would vote yes.

MR. SHAWL – He concurs with his colleagues.

MR. PHIFER – He concurs.

MR. HEALY – He concurs.

MR. YOUNG – Nothing to add.

MR. CASACCIO – He finds this is a unique lot due to the amount of wetlands restraints.

A motion was made by Mr. Pierson and seconded by Mr. Unsworth to grant the application for variance relief for lot frontage to permit development on a lot not fronting on an improved street with the condition that the applicants comply with all terms and conditions in prior Resolution BA23-07. In favor: Phifer, Pierson, Shawl, Unsworth, Healy, Young, Casaccio.

2. MPS LANDHOLDERS LLC – BLOCK 479, LOTS 30, 31, 32, 35 & 37 – BA14-12

Application is for a use variance to permit a 24 unit age-restricted facility in six separate buildings at 525 Tuckahoe Road, Marmora.

Michael Fusco, Esquire, represented the applicants. Mr. Fusco stated this application is identical to what was approved in 2007. Resolution BA12-07 is included as part of the application. The application is for a use variance for a use not permitted in this zone.

The applicants would have to obtain permits from the County and the State for an on-site waste water treatment facility in addition to returning to the Board for site plan approval.

John E. Halbruner, previously sworn, described the surrounding area.

At this time Chair Casaccio announced that he has a conflict since the proposed location of Heritage Acres Mobile Home Park is located within 200 ft. Vice Chair Unsworth took over as Chair.

Mr. Halbruner testified there are several streams and creeks that border the property. The site is commonly known as Shaw's Pig Farm. The site is located in the Conservation zone. The lots consist of 673 acres. There is 2,000 ft. of frontage along Tuckahoe Road of which approximately 1,400 ft. is improved. The lot is irregular shaped and extends almost 10,000 ft. from Tuckahoe Road toward northwest. A substantial portion of the lot consists of saline and freshwater wetlands. The wetland delineation was performed in 2006 and was verified by the NJDEP. The Letter of Interpretation from the DEP requires a 150 ft. buffer from the freshwater wetlands. Approximately 50 acres are upland and 18.2 acres of upland developable encumbered by environmental restrictions. About 504 acres are saline marsh and 119 acres are wooded freshwater wetlands.

Mr. Halbruner explained that the upland portion that is developable contains farm fields and outbuildings that were part of George's Farm Market. The applicants intend to preserve the paths that traverse the property to be used for passive recreation.

Mr. Halbruner testified that the applicants propose a 24 unit age-restricted facility. Six one-story buildings are proposed with four units per building. Each unit would have 2 bedrooms and would be approximately 2,300 sq. ft. including the garage. There would be a 1,200 sq. ft. community center. Two parking spaces are proposed for each unit and sixteen parking spaces for the community center. A 20 ft. wide roadway is proposed with access off of Tuckahoe Road. All this development would take place in about a 9 acres area. None of the proposed development falls within the flood hazard area. He believes the site is particularly well suited for age restricted housing primarily because of its opportunity for passive recreation. He feels that developing 9 acres out of 673 acres, half of which is traversable by foot, provides an abundant opportunity for passive recreation that most residents would enjoy. He believes that this site meets the intent and purpose of the revisions that have been made to the ordinance associated with a conditional use for an adult community even though an adult community is not allowed in the Conservation zone. He believes the Township recognizes the importance of providing such facilities.

Solicitor Marcolongo referred to correspondence from Paul Dietrich, Township Engineer, dated May 9, 2013, which states that the project meets the Township's conditional use standards for age-restricted development.

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Mr. Halbruner testified there are several special reasons that are applicable such as ( a ) since they will preserve over 600 acres of natural environment and maintain the rural characteristic; ( c ); ( e ) and ( l ). He believes there is no detriment to the public good and the benefits substantially outweigh the detriments. He feels the intent and purpose of the zone plan is in no way compromised but is enhanced. He agreed to all the conditions that were included in the previous approval.

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

MR. SHAWL – MPS Landholders is before the Board for property located at 525 Tuckahoe Road in Marmora also known as Block 479, Lots 30, 31, 32, 35 & 37. They are requesting a use variance to develop an age restricted development in the Conservation zone. The Zoning Board previously approved a use variance for this property but it has expired. John Halbruner gave testimony detailing the age restricted development, the size of the property and its suitability for this type of development. The property is over 600 acres. The development would take place outside of the flood hazard zone and the wetland buffer area. The project would meet the Townships conditional use standards for age restricted development. The applicant has agreed to make any development COAH neutral. The applicant agreed to develop a hedgerow bordering the wetlands. No one from the public testified. The applicant has agreed to conditions identical to what was previously approved. Mr. Halbruner provided special reasons that he believes make this property suitable for development. He agrees with Mr. Halbruner's testimony and feels this would be a good development for this particular property.

MR. PIERSON – There would be no impact under the new FEMA regulations. He concurs with the special reasons that were given and also feels special reason ( d ) would apply. He feels the property is specifically oriented for this type of development. He feels the requested variances can be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zoning plan.

MR. PHIFER – He believes the parcel is particularly well suited for this type of building since 24 units in 6 buildings would be much less impact than if they were single-family homes. Twenty four age restricted units would not increase the traffic as much as 18 single-family homes would. He believes the application can be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zoning plan or zoning ordinance. He believes that special reasons a, c, e, i, k and l apply.

MR. HEALY – He concurs.

MR. YOUNG – He concurs.

MR. UNSWORTH – He concurs. There was no public comment.

A motion was made by Mr. Pierson and seconded by Mr. Shawl to grant a use variance for the development of a 24 unit age-restricted development with the conditions set forth in prior Resolution BA12-07. In favor: Phifer, Pierson, Shawl, Healy, Young, Unsworth.

3. MARK & LINDA BATEMEN – BLOCK 835, LOT 6 – BA05-13

Applicants are requesting a variance to permit a two and one-half story single-family dwelling where two stories are permitted at 14 E Tecumseh Avenue, Strathmere. Chair Casaccio joined the Board.

Julius N. Korschak, Esquire, represented the applicant. Mr. Korschak stated that the applicants purchased the property in 1997. The applicants plan to retire here next year. After discovering rotting pilings and termite damage the applicants feel the best thing to do is to build a new house on the site. The height of the proposed structure is 33' 6" where 35' is permitted. The ordinance indicates that two habitable stories are permitted above base flood and the applicant proposes two and one-half stories. The proposed garage would have parking for two vehicles and an elevator. He submitted an aerial photograph that was marked as Exhibit A-1 and a survey by Mark G. DeVaul, dated 8-27-12 and last revised 9-14-12 that was marked A-2.

Mr. Korschak stated that the existing house does not meet the rear yard setback, one side yard setback and exceeds the permitted lot coverage and impervious coverage.

Linda Batemen, 14 E. Tecumseh Avenue, Strathmere, NJ, was sworn. Mrs. Batemen testified that rather than repair the extensive damage to the home they plan to build a new one. They have received a permit for their new septic.

Mr. Korschak stated that the overhang on the west side of the structure will be reduced to 18" to meet the ordinance requirements. The plan will be revised to show this change.

Christina L. Amey, Architect, was sworn. Mrs. Amey testified that she designed the plan of the proposed home. She referred to plans dated 4-2-13 revised 4-15-13. She explained that the proposed dwelling is designed to meet the requirements for building coverage and impervious coverage as well as the setbacks. She believes the new house will fit in with the homes in the neighborhood. She believes the benefits of granting the variance outweigh the detriments. The new structure would increase safety from floods and other natural disasters. It would also promote a desirable visual environment since the building would look the same even if the family room were not there. She believes the variance can be granted without detriment to the public good. The proposed single family dwelling is a permitted use in the Resort Residential zone. She believes the variance can be granted without impairing the intent and purpose of the zone plan and zoning ordinance.

The meeting was open to the public.

David Ferguson, 10 E. Tecumseh Avenue, was sworn. He testified that they own the adjacent property. He asked if the new structure would be higher than his home. Mrs. Amey explained that the new home would be 4.5 ft. higher than Mr. Ferguson's home.

Hearing no further comment the meeting was closed to the public and returned to the Board for findings of fact.

MR. SHAWL – Mark & Linda Batemen are the owners of 14 E. Tecumseh Avenue, Block 835, and Lot 6 in Strathmere. The applicants are seeking a C variance to permit two and one-half stories above AFB. The property is located in the RR zone. Mrs. Batemen and Christina Amey gave testimony. The new house meets the setbacks and coverage requirements. The design includes a two car garage that facilitates off street parking. The family room and bath are considered habitable space. The architect testified the house is aesthetically pleasing and fits with the character of the neighborhood. The house was designed to be safe from flooding. There is no detriment to the zone plan since this is a residential dwelling on a residential street and there is off street parking. There is no detriment to the public good because of the aesthetically pleasing design. The adjacent property owner asked how the height of a structure is now measured in Strathmere.

MR. PHIFER – Concurs with Mr. Shawl. He does not believe there would be any detriment to the public good. He believes the application conforms with special reasons in NJSA40:55D-2 ( a ) and ( i.).

MR. HEALY – He believes the application should be granted since he sees no detriment to the neighbor or the public good.

MR. YOUNG – The proposed height is less than allowed. He doesn't want the roof pitch to be less than 5. He feels the application could be approved without any detriment to the neighborhood.

MR. UNSWORTH – He concurs with his colleagues. He believes this is a unique property and creates some hardships. The existing structure is non-conforming and the new structure would solve the setback conditions. The existing structure has termite damage. The applicant has obtained the septic approval for the proposed septic system. He believes the application meets the intent of the ordinance. The new structure would meet all flood and building requirements.

MR. PIERSON – He concurs with his colleagues.

MR. CASACCIO – He concurs with the testimony by Mrs. Amey. The applicant will repair any damage to the curb and sidewalks.

A motion to grant the application was made by Mr. Pierson and seconded by Mr. Unsworth with the condition that the applicant revise the plan to meet all the bulk requirements and resolve the concerns in Mr. Dietrich's correspondence dated May 9, 2013 and repair any curb and sidewalk damage during construction. In favor: Phifer, Pierson, Shawl, Unsworth, Healy, Young, Casaccio.

## **RESOLUTIONS**

### **1. OFFSHORE PROPERTY GROUP LLC – BLOCK 599, LOT 14 – BA04-13**

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

2. RALPH & DEANNA HOLT – BLOCK 652.01, LOT 19 – BA15-12

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

**BILLS**

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

**CLOSED SESSION**

A motion was made by Mr. Shawl and seconded by Mr. Phifer to go into closed session to discuss pending litigation.

**ADJOURNMENT**

A motion was made by Mr. Shawl to adjourn the meeting. The meeting was adjourned at 9:15 p.m.

Submitted by,

Shelley Lea