

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
NOVEMBER 14, 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, Alistair Lihou, Susan Adelizzi-Schmidt and Paul Casaccio.

Absent: Lynn Petrozza.

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

APPROVAL OF THE OCTOBER 10, 2013 MEETING MINUTES

A motion to approve the minutes was made by Mr. Unsworth, seconded by Mr. Healy, and approved. Abstain: Young, Lihou.

TABLED APPLICATIONS

1. FRANCES D. EIDEN – BLOCK 845, LOT 20
2. CHARLES & TRACIE ZUSCHNITT
3. GLENN SHEELER – BLOCK

The above applications will be heard at the next meeting on December 12, 2013. No further notice will be given.

1. TIMOTHY & CAROL ANN McCANN – BLOCK 508, LOTS 1 – 13

The above application is tabled until December 12, 2013. The applicants are required to renotice.

SWEAR IN PAUL DIETRICH AND SHELLEY LEA

APPLICATIONS

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

Applicant is requesting a minor subdivision and a use variance to continue operating an existing commercial business in the Residential zone, a use variance to allow a flag lot and a rear yard setback variance at 3071 Route US 9 south in Seaville.

Chairman Casaccio stepped down during discussion and voting on this application.

Curtis Corson, Jr., 3065 Route 9 South, Seaville, New Jersey, was sworn. Mr. Corson testified he is requesting a minor subdivision to remove the commercial use from the portion of his property that he farms. He has filed an application with the County for farmland preservation. The County has approved the application pending the approval of the minor subdivision.

Mr. Corson referred to a plan of minor subdivision by Stephen C. Martinelli, dated 6-06-13 and revised 8-14-13. He is requesting a rear yard setback variance to permit a 25 ft. setback where 50 ft. is required on proposed lot 22.02 since he currently farms within 20 ft. of the building. He is asking for a use variance to allow a flag lot in the residential zone so he can retain frontage on Route 9. He also requires a use variance for the commercial use in the residential zone. He agreed that if he does not proceed with the farmland preservation he would return to the board to have the subdivision void.

Solicitor Marcolongo stated that the applicant meets the requirements of a flag lot since there is more than 50 ft. of frontage. The applicant will prepare a Deed of Cross Easement that would be subject to the approval of the Board Solicitor for the easements between the two lots.

Mr. Dietrich testified the commercial structure predates site plan approval. The size of the lot would be sufficient for amenities and septic. The plan meets the plat requirements for a minor subdivision.

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

MR. SHAWL – Mr. Corson is the owner of 3071 Route US 9 South in Seaville. He proposes to subdivide the property for the purpose of farmland preservation. The applicant maintains a commercial use in the front of the property and farms the rear portion of the property. Farming is a permitted use in the residential zone. The applicant is requesting a use variance to allow a flag lot, a rear yard setback variance and a waiver for not performing soil borings. The flag lot would preserve access. The existing commercial building predates the site plan requirement. Farming is a permitted use in the residential zone. The applicant has agreed to a deed of cross easement. The special reasons for granting the use variance include a and g. He does not believe the subdivision would impair the intent of the zoning plan or negatively impact the public good. There was no public testimony.

MR. LIHOU – He concurs.

MR. YOUNG – Nothing to add.

MR. HEALY – He concurs.

MR. PHIFER – He believes that relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning plan or zoning ordinance. He believes that special reasons NJS40:55d-2 a, c, e and g pertain to this application. He is in favor of the application.

MR. PIERSON – He agrees with his colleagues. He believes the application also meets special reason j.

MR. UNSWORTH – If granted the applicant agrees to the conditions that an easement be prepared that is reviewed and approved by the Board Solicitor and if the property is not approved for farmland the applicant would come back to the Board to merge the properties.

A motion was made by Mr. Pierson and seconded by Mr. Shawl, to grant the application for minor subdivision approval, use variances for expansion of a non-conforming use and flag lot in a residential zone, rear yard setback and waiver for not supplying soil borings and conditions that the applicant will complete the cross easements for review prior to filing and if the farmland preservation falls through the applicant would return to the Board to have the subdivision deemed null and void. In favor: Phifer, Pierson, Shawl, Healy, Young, Lihou, Unsworth.

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

Applicants are requesting an interpretation as to whether their property is a one or two family dwelling and a possible use variance at 1 Jason Drive, Palermo.

Mr. Casaccio rejoined the board. Paul and Lynn Tibbitts, 1 Jason Drive, Palermo, New Jersey, were sworn.

Solicitor Marcolongo informed the Board that the first issue is to determine if the applicants have a single family or a two family dwelling. He supplied a copy of the ordinance definition of a dwelling attached, dwelling two-family and dwelling unit.

Mr. Tibbitts testified they purchased the home in 1997 from Lynn Thompson and had the mother in law addition built for an elderly aunt. He feels this is a single family home because there is an interior door leading from the addition to the main house. There are three exterior doors. One of these doors leads to the addition. He testified that the refrigerator has been removed from the kitchen in the addition. He stated that no changes have been made to the footprint of the home since they bought it.

Mr. Tibbitts testified that Lynn Thompson the builder applied for the permits for the addition. The zoning permit issued that was issued on 10-22-97 indicated that the rear

door must be removed. He did not find out about this condition until later. At that time there was not an interior door between the apartment and the house. He believes this is

not a self-contained unit because of the interior door. A certificate of occupancy was issued for the dwelling and the addition. He stated that he wrote a letter to the zoning officer in January of 1998 explaining that the addition was used by his handicapped aunt. His aunt passed and they placed an ad in the newspaper to try and rent the apartment. A neighbor forwarded a copy of the ad to the zoning office in 2000.

Mr. Tibbitts stated that other family members have utilized the apartment. They feel the women currently residing in the addition is like part of their family. He stated there is only one electric meter and one septic. Trash, parking and utilities are common and there is no dining room in the addition. His interpretation of the ordinance is that the property is a single-family dwelling. He is upset that 15 years later he is being asked to change his home.

A color copy of a sheet of paper with 3 photos that was included in the application was marked as B-1. After the photos were shown to the applicant they were reviewed by the board members since their copies were black and white. Mr. Tibbitts stated that the interior door shown on the photo has been removed. The door was there during the inspection done by the Zoning Officer on February 15, 2013. He testified that instead of removing the rear exterior door they added the interior door which satisfied the previous zoning officer. That zoning official informed that he had to have a common dining area so that it would not be a self-contained unit.

There was discussion about removing the stove and the refrigerator and leaving the interior door off.

The meeting was open to the public.

John Larosa, 4 Jason Drive, Palermo, was sworn. Mr. Larosa objects to a two-family dwelling but he is in favor of an in-law suite as long as the applicants comply with what transpired during the meeting.

John Lugo, 2 Jason Drive, Palermo, was sworn. Mr. Lugo asked if this would be called a mother in law suit if the kitchen were removed.

Rick Traverse, 14 Nadine Boulevard, was sworn. Mr. Traverse asked if someone is allowed to rent a room in their home.

Donald Matousch, 1 Nadine Boulevard, was sworn. He has no problem with this issue since the footprint of the house has not changed. He is not concerned about what goes on inside the house. He asked if further inspections of the home would be done.

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The board discussed creating a 6 ft. wide archway to create common area. The board was polled to give their opinion as to whether the kitchen should be removed, an archway added or both.

MR. LIHOU – The kitchen should be removed.

MR. YOUNG – If the archway were 6 – 8 ft. it would be adequate.

MR. PHIFER – Remove the kitchen.

MR. SHAWL – Remove the kitchen and make an archway.

MR. UNSWORTH – The kitchen and the rear door should be removed.

MS. ADELIZZI-SCHMIDT – The rear door should be removed and the stove taken out.

MR. PIERSON – Remove the kitchen, make an archway and remove the exterior door.

MR. HEALY – Remove either the kitchen or the rear door.

MR. CASACCIO – Make an archway.

The board gave their findings of fact.

MR. UNSWORTH – Paul and Lynn Tibbitts owners of 1 Jason Drive in Palermo are asking the board to interpret if their home is a single family or a two family dwelling in its current state. The applicants have proposed removing a portion of the second kitchen by removing the refrigerator and range to create a wet bar. They testified the door between the two spaces has been removed. There were comments by the public and they seem to agree with the proposal. The applicants have agreed to do the proposed work by March 28, 2014. He finds that the property is currently a two family dwelling but that it would be a single family dwelling after the proposed changes.

MR. SHAWL – Testimony was given that the applicant's friends and family utilize the addition and live as a family unit. Currently the house appears to be a two family dwelling. The applicants have agreed to remove the stove and the door between the units. If this is done he would consider the property a single family dwelling.

MR. PHIFER – He finds there was no malicious intent by the applicant to deceive the Township. He finds the property currently is a duplex. By removing the stove the property would be considered a one family dwelling.

MR. YOUNG – He finds this was an oversight. He finds the property is currently a duplex but could be made into a single family dwelling by removing the interior door and the kitchen. The rear door would have to be removed if the kitchen were to remain.

MR. LIHOU – Nothing to add.

MS. ADELIZZI-SCHMIDT – Nothing to add.

MR. PIERSON – Because of the kitchen and rear door he finds the property is currently a two family dwelling. He agrees there is nothing in the ordinance that states there can only be one kitchen. He agrees the proposed changes would convert the structure back to a single family dwelling.

MR. HEALY – He finds the applicants currently have a two family dwelling. If the back door were removed the applicants could keep the kitchen. He believes either the rear door or the kitchen must be removed to interpret this as a single family dwelling.

MR. CASACCIO – He concurs with his colleagues. He believes this is currently a two family structure.

A motion was made by Mr. Pierson and seconded by Mr. Unsworth to find that the applicants structure would be considered a single family dwelling after the removal of the

second kitchen and removal of the door between the two units. This work will be completed with appropriate construction and plumbing permits and an inspection by the zoning officer will be completed on or before March 28, 2014. In favor: Phifer, Pierson, Shawl, Unsworth, Healy, Young and Casaccio.

RESOLUTIONS

BRETT AND EMILY BUONADONNA – BLOCK 453, LOT 10.05 – BA16-13

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

BILLS

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

CLOSED SESSION

A motion was made by Mr. Unsworth and seconded by Mr. Pierson, to go into Closed Session to discuss pending litigation at 9:06 p.m. The Board went back on the record at 9:16 p.m.

DISCUSSION

Chair Casaccio discussed the number of pending applications.

ADJOURNMENT

A motion was made by Ms. Adelizzi-Schmidt and seconded by Mr. Pierson to adjourn the meeting. The meeting was adjourned at 9:17 p.m.

Submitted by,

Shelley Lea