

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
FEBRUARY 11, 2016**

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: Sherrie Lisa Galderisi, Joseph Healy, Thaddeus Klepac, Lynn Petrozza, Christopher Phifer, Andrew Shawl, Susan Adelizzi-Schmidt, Carol Tutelian, Matthew Unsworth and Paul Casaccio.

Absent: Alistair Lihou.

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

**APPROVAL OF THE JANUARY 2016 MEETING MINUTES**

A motion to approve the minutes was made by Mr. Shawl, seconded by Mr. Unsworth, and approved. Abstain: Petrozza, Adelizzi-Schmidt.

**APPLICATIONS**

1. **ESTATE OF RITA SCHIAVO – BLOCK 836 LOTS 1, 2, 5 & 5.03 – BA03-16**

Application is for a minor subdivision to realign the existing lot lines and a use variance for the expansion of a non-conforming use at Sumner Avenue and Tecumseh Avenue in Strathmere.

Mr. Unsworth stepped down during this application.

Arthur T. Ford, III, Esquire, represented the applicant. The purpose of the proposed subdivision is to sell a portion of the property to the owner of lots 1 and 2 and the rest to the owner of lot 3. The existing structures on lots 1 and 2 were built more than 70 years ago. The subdivision would eliminate three existing non-conformities and improve some others.

Mark DeVaul, Licensed Surveyor, was sworn. He prepared the plan of subdivision, dated 12/2/2015 and revised 1/7/2016. He agreed the subdivision would eliminate the non-conforming side yard setbacks on lots 1 and 2 and bring the lot area of lot 5.03 into

conformance. He believes the new lot lines would not have a detrimental effect on the zoning ordinance or zoning plan.

Solicitor Marcolongo explained the seven existing structures on lots 1 and 2 require a use variance. He suggested that a condition of approval should be that the approval of the subdivision shall be in no way construed to evidence that the zoning board endorses the current density on the south property.

Paul Dietrich and Shelley Lea were sworn.

Mr. Dietrich testified this is a unique application since the non-conformities are being improved. He testified the subdivision plat meets the township filing requirements. He explained that lot 5.01, an existing vacant lot, would be eliminated as part of the subdivision. This 6,000 sq. ft. lot would be divided so that 3,000 sq. ft. would be added to lot 2 and 3,000 sq. ft. would be added to lot 5.03.

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

MR. SHAWL – The Rita Schiavo Estate is represented by Arthur Ford, Esquire. The properties front on Sumner Avenue, Commonwealth Avenue and Sumner Avenues. The properties are shown on the tax map as lots 1, 2, 5.01 and 5.03 in block 836. There are currently cottages located on lots 1 and 2 that have existed for many years. The purpose of the subdivision is to reduce the number of non-conformities and add area to lots 2 and 5.03. Since this is a substantial change to a non-nonconforming use a use variance is needed. He feels that special reasons for granting the variance do apply. Mark DeVaul testified in regards to the benefits of subdivision. The subdivision would bring the property more into compliance. The subdivision would not negatively affect the zoning plan or zoning ordinance and would not have a detriment on the public good. Lots 1 and 2 are in common ownership. Existing lot 5.01 would be divided between lots 2 and 5.03 resulting in the preservation of light, air and open space. He finds the subdivision could be approved without detriment to the public.

MS. PETROZZA – She concurs.

MR. PHIFER – He concurs.

MRS. GALDERISI – She concurs.

MRS. TUTELIAN – She concurs.

MR. KLEPAC - He concurs. There was no public comment.

MS. ADELIZZI-SCHMIDT – She concurs with Mr. Shawl.

MR. CASACCIO – A condition should be that any approval does not pertain to future applications,

A motion was made by Ms. Adelizzi-Schmidt and seconded by Ms. Petrozza, to grant the application with two conditions, the contingency of the sale to the adjacent property owners within 180 days or the subdivision approval will be deemed null and void and that the subdivision approval in no way evidences a zoning board endorsement of the

existing non-conforming conditions or future development on the lot. In favor: Healy, Petrozza, Phifer, Adelizzi-Schmidt, Shawl, Tutelian, Casaccio.

2. RONALD MONTGOMERY – BLOCK 845 LOT 7 – BA 25-15

Applicant is requesting a use variance for expansion of a non-conforming use, a variance to allow three habitable floors and a height variance to raise an existing triplex at 10 E. Whittier Avenue in Strathmere.

Mrs. Tutelian stepped down during this application.

Arthur T. Ford, III, Esquire, represented the applicant. He submitted three exhibits into the record. A corkboard containing six photos of the site was marked A-1, a corkboard with seven photos was marked A-2 and one photo of the subject property was marked A-3. A letter to the applicant from Mr. Dietrich dated November 13, 2013 was marked A-4.

Ronald W. Montgomery, 10 E. Whittier Avenue, was sworn. He testified that he purchased the property in 1979. He believes the structure was built in 1898. This was an existing triplex when he purchased the property. He renovated the property in 2003. He testified that A-1 shows the damage to the property from Storm Sandy when 2 ½ feet of water came into the first floor. A-2 shows the water damage from the last storm on January 23, 2016 where 11 inches of bay water entered the first floor. A-3 includes two photos of the flood water taken from the third floor where he resides. A-4 is the exterior of the first floor. After each storm he has had to remove drywall, appliances, rugs, furniture, bedding, computers, clothing and other items. His daughter lives on the first floor and is presently displaced.

Mr. Montgomery is proposing to raise the structure above base flood. He testified the existing septic is located in the front yard. If he does not raise the structure the cost for insurance would be increased substantially. There is a two story home with parking underneath on adjoining lot 6 and lots 8 and 9 are vacant.

The board reviewed the proposed changes to structure. Mr. Dietrich testified that the previously approved plan by J.W. Peterson Architects, dated 11/5/02 and issued on 11/26/02 do not match what is existing today. Living space was added to what is now the ground floor that was not shown on the previously approved plan and increased the impervious coverage. The layout of the ground floor unit is different than what was approved in 2002. The only thing changing on the second floor are the proposed decks needed to raise the structure. The layout of the third floor has been changed since the previous approval. He is not sure about the dimensions since the proposed plan does not include dimensions. The setbacks of what was previously approved do not match the setbacks for the proposed structure.

Mr. Dietrich testified the original plan did not show a family room on the ground floor. The previously approved plans show the square footage of the ground floor to be 695 sq. ft., the second floor 883 sq. ft. and the third floor was 883 sq. ft. The three floors appear to be equal today. The added space would not have changed the building coverage since there is coverage above it.

Solicitor Marcolongo stated the setbacks shown on the survey from the previous approval and the new survey by Mr. DeVaul do not match. It appears the structure was built closer to the rear property line than approved.

The applicant agreed to continue the application until March 10, 2016 at 7:30 p.m. An announcement was made that no further notice would be required.

Susan Adelizzi-Schmidt left the meeting at this time.

Daniel Reeves, Esquire, represented Olga Chyzowych and Decima Anderson. Both neighbors have concerns about the rear yard setback and the height of the structure.

Chairman Casaccio will open the meeting to the public at the hearing in March.

3. 71 ROUTE 50 LLC – BLOCK 561 LOTS 36 & 37 – BA 27-15

Applicant is requesting a use variance to permit two principal structures on one lot and site plan waiver to construct a 1,200 sq. ft. building at 71 Route 50 in Seaville.

Carol Tutelian stepped down during this application.

Clement Lisitski, Esquire, represented the applicant. He stated the applicant proposes to construct a storage building on the same lot where there is currently a 448 sq. ft. real estate office building. Besides real estate the owners also rehabilitate, renovate and construct homes. The proposed building is larger than the existing building. The real estate office is a permitted use in the TC zoning district. Garages are also permitted.

Mr. Lisitski stated the applicant is requesting a variance to allow two principal buildings on the lot. The garage would be used to store building materials, tools and vehicles. He finds the application promotes the general welfare since the building is located where there are other similar commercial uses. Although this is an undersized lot the proposed use would maintain light, air and open space since each of the setbacks are being met. The application promotes sufficient space and appropriate locations. He stated the environment is being preserved by storing things inside. He also finds special reasons h and I since the application promotes the free flow of traffic and creates an environmental visual environment.

Joseph Maffei, Professional Engineer, was sworn. Mr. Maffei testified using the site plan prepared by EDA, dated 12/8/15 and revised 12/29/15. The proposed building meets the

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setback and coverage requirements in the zone. He testified that the project promotes the flow of traffic on site. He feels there would not be any negative impact on the public good. He believes the proposed structure conforms to the intent of the TC zone since it allows for mixed uses and is consistent with the zoning plan and zoning ordinance. He concurs with the special reasons stated by Mr. Lisitski. There is one single light proposed on the garage.

Paul Rixon, of Petersburg, New Jersey, testified the structure is similar to many on Route 50. There would be one or two garage doors on the front of the building and one entrance door. They will be storing construction equipment and materials and one backhoe. There will be no vehicles or fuels stored in the building. There would not be any customers coming to the garage and it would be utilized approximately 5 days a week. He agreed to a condition that nothing would be stored outside of the building.

Mr. Dietrich testified that sufficient drainage is proposed. He asked that the applicant confirm that the two existing inlets on site are functioning properly.

The meeting was open to the public.

Mark DeVaul, previously sworn, testified that he lives to the north of the property. He is in favor of the application.

Hearing no further comment the meeting returned to the board for findings of fact.

ANDREW SHAWL – The applicant is the owner of the subject property located at 71 Route 50 in Seaville. There is currently a 400 sq. ft. real estate office on the property. The applicant proposes to add a 1,200 sq. ft. storage building. The proposed accessory structure would be three times the size of the existing office. The applicant is requesting a use variance to allow two principal structures on this undersized lot. The lot is located in the TC zoning district and the proposed use is permitted. The lot is approximately 80% of the required area. This is an existing non-conforming lot. There is no additional land to purchase. The applicant is requesting a waiver of the site plan details and environmental impact study. He feels it is agreeable to grant the waivers. Testimony was given that the new structure would not increase traffic. Mr. Maffei testified the proposed use is consistent with the TC zone. Special reasons in support of the application include a, c, e and h. There is more than adequate parking provided on the site. Mark DeVaul testified that he is in favor of the application. There is a similar building less than 500 ft. away from this proposed building. He finds the application could be granted without substantial detriment to the zone plan or the municipal land use plan.

MS. PETROZZA – She concurs. She finds the application meets special reasons g and i. Mr. Rixon has agreed to a condition there will be no outside storage.

MR. PHIFER – Nothing to add.

MRS. GALDERISI – She concurs.

MR. KLEPAC – Nothing to add.

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MR. UNSWORTH – He concurs. The applicant has agreed to investigate the existing on site drainage.

MR. HEALY – He concurs. He finds there would not be any detriment to the public good.

MR. CASACCIO – He concurs. There is no property on either side to acquire to add to the property.

A motion was made by Mr. Unsworth and seconded by Ms. Petrozza, to grant the application with the condition there would be no outside storage of equipment or materials and the applicant will locate the drainage system and confirm that it is working. In favor: Healy, Klepac, Petrozza, Phifer, Shawl, Unsworth, Casaccio.

4. KEVIN MURTHA AND KARLYN ACCIAVATTI MURTHA – BLOCK 348  
LOT 84.04 – BA 26-15

Applicants are appealing a determination by the zoning officer that the new structure on this property is a two family dwelling and requires a use variance at 6 McDaniel's Court in Petersburg.

There were some questions regarding whether or not the notices were proper prior to beginning the application.

Jeffrey April, Esquire, represented the applicants. He stated that the applicants were before the board in September of 2014 to obtain a variance for side yard setbacks to build a single family home as shown in Resolution BA 17-14.

Mr. April stated the structure is two modular homes that are attached. The one portion of the house is a man cave with a television room for her husband, a studio and a butler panty. No cooking would be done in the butler pantry. The butler pantry would contain cabinets, sink, refrigerator, wine refrigerator and dishwasher. There is a full bathroom in the studio. A breezeway will be built in the garage. An access door will be located in the television room and French doors will be located in the butler pantry to access a pool in the rear yard. His client was told that two exits were needed. He believes that a conversation with the bank appraiser led the zoning officer to determine this was a two family dwelling.

Karlyn Murtha Acciavatti, 1441 West Avenue, Ocean City, was sworn. She is the owner of the subject property. In September 2014 she accepted a condition the property would be a single family dwelling and agreed to a deed restriction. She and her husband will occupy the structure. She stated that a breezeway would be built to connect the main house to the garage and the man cave.

Mrs. Murtha testified this is a single family home. She has no intentions of renting it or letting anyone live in that side. She stated this side of the home is strictly for their use. She stated that the man cave would be used when they have parties, using the pool or

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when there is a game her husband can have his friends over to smoke cigars and watch the television.

Mrs. Murtha testified the butler pantry would have a wet bar, a refrigerator and a wine refrigerator. There would be cabinets to store dishes for the pool area. There would also be a dishwasher. The back area would be used as her studio where she proposes to have a pottery wheel and two kilns and her supplies. The pottery is strictly a hobby and not for profit. There is only one electric meter on the house. She supplied photos of the man cave with each application. She testified that although there are washer/dryer hookups in the man cave she will not be using them.

Mr. Dietrich testified that the dimensions of the structure match what was proposed at the hearing in 2014, however at that time the board did not have a floor plan of the man cave.

Ms. Lea testified that she was contacted by an appraiser from the bank asking if the applicants had received a variance to allow a two family home. After reviewing the plans provided to the construction office it was her interpretation that the subject property has everything needed to make it a two family dwelling as shown in the ordinance. She does not agree this is a butler panty since the submitted photos show hookups for a refrigerator, microwave, stove, sink, etc. It was her interpretation the structure does not meet the interpretation of a single family dwelling.

Solicitor Marcolongo stated that he received the first draft deed restriction in December 2015 from Mr. April. He responded to Mr. April in December and asked for language that mirrored the conditions in the resolution. He has not received a subsequent deed restriction.

The meeting was open to the public.

Herbert Degan, 4 McDaniels Court, was sworn. He testified that he has worked in construction and it is his opinion this is a two family structure. He has spoken to several of the people working on the home and was told there are two electric panels and two separate heating systems.

Ms. Lea agreed the structure is two separate buildings and it is separated by a garage. As the zoning official it is her concern that the man cave could be shut off from the garage and used as an entirely separate dwelling unit.

Mr. April stated that the board could interpret this is a single family dwelling and attach conditions to enforce that.

The board was asked to give their findings of fact.

MR. SHAWL – The owner of 6 McDaniels Court is before the board for an interpretation as to whether the structure is one dwelling unit or two dwelling units. The applicant was

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represented by Jeff April, Esquire. The application contained a deed, a previous decision by the board regarding a different dwelling, a definition of a dwelling unit and two family unit, a plan showing the location of the structure on the property and pictures showing the exterior and interior of the man cave area adjacent to the garage. The zoning official supplied her written opinion and floor plan obtained from the construction office. The applicant also submitted elevations of the exterior of the structure and a rendering of the inside of the structure. The applicant has labeled the interior as a television room, butler pantry and studio. The rendering shows the main portion of the home has a kitchen, dining room, master bedroom, den, great room and second bedroom and utility room. The zoning official made her determination by reviewing the definition in the code and looking at the plan provide to the construction official. The plan submitted to the construction official contains a garage, a kitchen nook with a stove, sink and refrigerator, a great room, guest bedroom with a sitting area and walk in closet and full bath. The man cave has a washer/dryer hookup in a linen closet and another half bath. It is his opinion there is enough there for a separate dwelling unit. The applicant has testified she will use the guest room as a studio for pottery with possibly two kilns along with a pottery wheel. She testified there would not be any cooking in the butler pantry and the television room would be used by her husband since he likes to smoke cigars. She indicated the sliding door would open up to a pool and that the butler pantry would contain items for entertaining in that outdoor space. He finds the outside of the home to be beautiful. He finds the cabinets and floors in the man cave to be beautiful as well. He finds there are standard outlets in the half bath and guest room. Based on the evidence provided it looks like a house with two dwelling units.

MS. PETROZZA – She concurs.

MR. PHIFER – Nothing to add.

MRS. TUTELIAN – Based on the separate entrance and because the man cave is on the other side of the garage, she finds there are two separate dwelling units.

MR. HEALY – He concurs with the facts produced by the zoning official and concurs with the rest of the board.

MR. USNWORTH – He concurs. He finds all the physical attributes are there and the structure meets the definition of a two family structure whether the intent is to use it as one or not it physically is a two dwelling structure.

MR. CASACCIO – He concurs. The applicant was not able to provide the board with the amount of bedrooms the septic system was approved for. There was testimony by a neighbor within 200 ft. that observed the construction and spoke the building contractors.

A motion was made by Mr. Unsworth and seconded by Mr. Healy, to grant the notice of appeal and find that the structure is a single family dwelling in accordance with the zoning ordinance and the prior approval and that the decision by the zoning official is erroneous. In favor: Phifer. Opposed: Healy, Petrozza, Shawl, Tutelian, Unsworth and Casaccio.

**RESOLUTIONS**

TERRY J. DAILEY – BLOCK 566 LOT 51 – BA22-15



A motion to adopt the resolution was made by Mr. Unsworth, seconded by Mr. Phifer, and approved.

NORMAN LAWAND – BLOCK 727 BLOCK 14.02 & 15 – BA21-15

A motion to adopt the resolution was made by Mr. Shawl, seconded by Mr. Phifer, and approved.

**BILLS**

A motion to pay the bills was made by Mr. Klepac seconded by Mr. Healy, and approved.

**ADJOURNMENT**

A motion to adjourn the meeting was made by Mr. Unsworth, seconded by Mr. Healy, and approved. The meeting was adjourned at 10:00 p.m.

Submitted by,

Shelley Lea  
Secretary