

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
MAY 12, 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: Joseph Healy, Thaddeus Klepac, Lynn Petrozza, Christopher Phifer, Susan Adelizzi-Schmidt, Andrew Shawl, Carol Tutelian, Matthew Unsworth and Paul Casaccio.

Absent: Sherrie Lisa Galderisi.

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

**APPROVAL OF THE APRIL 14, 2016 MEETING MINUTES**

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

**SWEAR IN PAUL DIETRICH AND SHELLEY LEA**

**APPLICATIONS**

1. RONALD MONTGOMERY – BLOCK 845 LOT 7 BA25-15

Continuation of the application for a use variance for expansion of a non-conforming use and a variance to allow three habitable floors needed to raise an existing triplex at 10 E. Whittier Avenue in Strathmere.

Mrs. Tutelian has certified that she listened to the recording of the March 10, 2016 meeting.

Arthur T. Ford, Esquire, represented the applicant. He provided a copy of correspondence from Selective Insurance Company dated April 8, 2016 that was marked as Exhibit A-7 and a photo showing the sump pump by the outside shower on the applicant's property was marked A-6.

John Pederson, Architect, was sworn. Mr. Pederson testified in regards to his revised plans dated 3-31-16. The reviewed the ceiling heights for each unit.

ZONING BOARD OF ADJUSTMENT

MAY 12, 2016

PAGE 2 OF 9

He described how they plan to raise the structure and stated that they plan to save as much of the structure as possible. He stated the house is three stories and when it is raised would be reinforced to meet the additional wind loads. The structure would comply with the height restriction after it was raised. The building coverage proposed is 27% and the impervious coverage would be 29.7%. He testified that the structure would not cast any additional shadows onto adjacent properties. He agreed that raising the building would benefit public safety and prevent future flooding. He feels that raising the structure would not have a detrimental effect on the master plan or zoning ordinance.

Mr. Dietrich reviewed the expansion of the ground floor unit that was not included in their previous approval. This expansion would require a use variance for expansion of a non-conforming use.

Solicitor Marcolongo reminded the board that in 2003 the applicant was granted variance relief to develop this three story structure to a height of 33 ft. He feels the previous approval offers protection for the three stories.

In regards to whether or not the structure fits in with the neighborhood Mr. Pedersen testified there are other houses as tall as this in Strathmere. He stated that because of the close proximity to the property line the building code limits the number of windows they put in. He also testified the house is compatible to other homes in the neighborhood. He was not able to offer any testimony in regards to the ground floor expansion discussed previously. He did indicate that the expansion was not included on his plan from 2003 since living space is not permitted below base flood elevation.

Mr. Dietrich stated that the flat roof on a portion of the building does not impact the building height.

Mr. Unsworth commented that at the previous hearing the neighbors were not just concerned about the drainage from the outside shower but the fact that there is a shower in this tiny setback. The approval previously granted allowed a 4 ft. rear yard setback and the setback is currently 2.7 ft. The applicant was going to research this and have testimony to clarify the setbacks. Mr. Dietrich explained that the rear setback did not change since 2003 since the structure was not moved, however the current survey does not match the survey from 2003. The addition to the structure was on the front and side and not the rear.

The revised plan notes a concrete apron but does not show the dimension. Mr. Dietrich stated there is currently a sidewalk in front of the property. He also stated that a 22 ft. curb cut would be sufficient.

Ms. Lea stated that the property is assessed as a triplex.

The meeting was open to the public.

ZONING BOARD OF ADJUSTMENT

MAY 12, 2016

PAGE 3 OF 9

Eric Galabrant, Esquire, represented two adjoining property owners. He does not believe the applicant is protected by the approvals granted in 2003 since the setbacks are less than approved. He discussed the addition that was constructed without permits. He submitted a photo showing the rear of the applicant's structure that was marked P-2. He stated that the plan shows the vehicles on the subject property are parking on the septic. He disagrees that there would not be a negative impact on light, air and open space. He asked about the drainage for the shower and how often the septic is pumped.

Mr. Montgomery testified that he might have the septic pumped once a season.

The meeting was closed to the public.

Solicitor Marcolongo stated that the applicant is requesting a D2 use variance for expansion of a non-conforming use because in 2003 the applicant was not approved for the family room in the front of the building. In order to grant the use variance the board members must find the purposes of zoning are advanced or special reasons and the negative criteria. There are several C variances being requested, including rear yard setback, side yard setback, impervious coverage, building coverage and length of curb cut. These can be granted under the C1 or C2 hardship. A condition of approval would be that the applicant replace the curb, sidewalk and apron after construction to the satisfaction of the board engineer.

The board gave their findings of fact.

MR. SHAWL – Ronald Montgomery is before the board requesting variances for an existing triplex on Block 845 lot 7. Several C variances and a D variance for expansion of a non-conforming use are requested. The lower level of the structure is at grade and has been damaged repeatedly during tidal flooding. The building is three stories and contains three separate dwelling units. The ceiling heights were reviewed. After the structure is raised it would be below the height requirement. The impervious coverage would be reduced from 64.2% to 55%, where 45% is permitted. In order for the existing building to be 3'7" above the existing grade the existing steps to all three units would have to be expanded. The proposed building coverage is 29.7% where 27% is permitted. The previously approved setbacks and the existing setbacks have been reviewed. The applicant proposes six parking spaces on the lot and a 22 ft. wide curb cut. Parking on Whittier Avenue will be created due to the new driveway configuration. The applicant has testified the three units have existed since the structure was built in the 1920's. Improvements to the structure were done in its original location and the structure has not been moved. The family room addition on the first floor that was not approved in 2003 requires variance relief. Testimony has been offered that raising the structure would secure it from flooding and that shadowing on adjacent properties would not be exasperated. The neighbors in the rear have sheds and garages that are close to the property lines. The existing footings underneath the house would be used to support part of the structure. They will use heliacoil pilings would be used for additional support. Testimony was given that the structure would be compatible to other seashore

ZONING BOARD OF ADJUSTMENT

MAY 12, 2016

PAGE 4 OF 9

dwellings in Strathmere. Mr. Garrabrant, Esquire, does not believe the applicant should be protected under the 2003 approval since changes were made and requirements have changed. A photo showing the adjoining property was submitted to show the proximity of the structure to her property. The neighbor has testified that water from the outside shower comes onto her property. He finds that raising the structure would secure it from flood and increasing the volume of the first floor would correct the deficiency in regard to the ceiling height. He finds the existing structure tall in comparison with the neighbors. MS. PETROZZA – She feels the C variances can be granted using special reason I, however she has not heard enough testimony to grant the D2 variance.

MR. PHIFER – he has conflicting thoughts with all the variances requested. In regards to the C1 variance he finds there are no hardships. In regards to the C2 variances, it makes sense to raise the structure but he thinks the setbacks are ridiculous. He finds that special reason a applies in granting the D variance, however special reason a does not apply to the neighbors. He finds the testimony conflicting and at times inaccurate. Overall he would be opposed to the application.

MRS. TUTELIAN - She finds that sufficient testimony was not given for the addition to the first floor. She finds that special reason exists since protecting from flood is important. She believes the C variance could be granted but there is not enough testimony supporting the D variance.

MR. UNSWORTH – He concurs with Mr. Shawls' findings. He finds the C variances for the setbacks are pre-existing non-conforming and the impervious coverage is being improved. He has not heard any testimony to justify the expansion of the first floor, especially the family room area that was not an approved part of the structure at any point during the approval process or the construction process. He is not in favor of the D variance.

MR. HEALY – He concurs with his colleagues.

MR. CASACCIO – Mr. Dietrich reviewed the plans and finds the realignment of the driveway keeps the parking away from the septic. He finds the C variances could be granted, however he is not in favor of the D variance for expanding the ground floor without any permits.

There was a short break while the applicants privately discussed how to proceed with their application.

The applicant's professionals requested to continue their application until the June 9, 2016 meeting. They agreed to waive the tolling of the time. They further agreed to submit revised plans at least ten days prior to the meeting.

2. EDWARD MCCARRON AND LINDA CHECCHIO – BLOCK 851 LOT 17 – BA06-16

This application was tabled until June 9, 2016. The applicant's attorney agreed to waive the time in which the board has to act on this application. No further notice of this application will be given.

3. WILLIAM COSSABOONE – BLOCK 845 LOT 5 – BA 08-16

This application will listed on the July 14, 2016 meeting agenda. Notice will be given.

4. JEFF & JILL MCINTYRE – BLOCK 479 LOT 40.02 – BA 07-16

Applicants are requesting a variance for side yard setback and a variance to allow an accessory in the front yard at 326 Morris Avenue in Marmora.

Jeff McIntyre, 326 Morris Avenue, Marmora, was sworn. Mr. McIntyre testified the property is located in the Conservation Zone. He proposes to install a 52'4" x 15'3" solar panel on his property. He is limited to where the solar panel can be located due to the existing wetlands on the property. He is proposing to locate the panel in the front yard where it would be 150' away from the wetland buffer. He is also requesting a side yard setback variance to allow the structure to be 1' from the property line where 5' is required. The panel would be 39'8" from the front property line.

Mr. Dietrich stated that solar panels have been determined to be a beneficial use in the State of New Jersey.

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

MR. UNSWORTH – The applicants are seeking to install a ground mount solar array in their front yard. This is a unique lot since it is buffered by wetlands. The lot is located at the end of cul-de-sac. The applicants are requesting front and side yard setback relief. The wetlands dictate where the solar panel can be located. The orientation of the home does not allow the panels to be placed on the roof of the house or garage. The proposed location is the best location on the site for the solar panel. There was no public comment. Solar panels are considered inherently beneficial. He sees no detriment to the public good.

MS. ADELIZZI-SCHMIDT – She concurs.

MR. HEALY – He concurs.

MR. SHAWL – He concurs.

MS. PETROZZA – She concurs.

MR. PHIFER – He finds special reasons a, b and c apply to this application. He finds the benefits of granting the application outweigh any detriments.

A motion was made by Ms. Petrozza and seconded by Ms. Adelizzi-Schmidt, to grant the application as presented. In favor: Healy, Petrozza, Phifer, Shawl, Adelizzi-Schmidt, Tutelian, Unsworth, Casaccio.

3. DONALD L. SIMON SR. – BLOCK 348 LOT 94.04 – BA 09-16

ZONING BOARD OF ADJUSTMENT

MAY 12, 2016

PAGE 6 OF 9

Applicant is requesting variances for lot area, lot depth, front yard setback, rear yard setback, maximum building coverage, impervious coverage and landscape buffer to construct a single family dwelling at 7 Farm Road in Petersburg.

Donald Simon Sr., 2 Gardner Lane, Marmora, was sworn. Mr. Simon testified that the zoning of his property has been changed from Residential to Agriculture requiring a larger lot size and setbacks. He testified the house he proposes to construct will fit in with the character of the neighborhood.

Mr. Dietrich explained why the zoning of this subdivision was changed in 2007. If the property were still zoned residential the proposed house would not require any variances.

The meeting was open to the public.

Stephen Martinelli, 1923 Tuckahoe Road, Petersburg, was sworn. Mr. Martinelli testified that he is in favor of the proposed application.

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

MR. SHAWL – Mr. Simon is the owner of lot 94.04 in block 348 also known as 7 Farm Road. The applicant proposes to construct a single family home on this lot. The rezoning of the lot requires that the applicant obtain several variances to build his home. The property were still zoned residential he would not need any variance to construct his home. There are existing homes in this subdivision. He finds that a hardship exists. He finds the variances can be granted without any negative impact on the public good and would not have any detrimental effect on the zoning plan. Public testimony was given in support of the application.

MS. PETROZZA – She concurs.

MR. PHIFER – He agrees with Mr. Shawl.

MRS. TUTELIAN – She concurs.

MS. ADELIZZI-SCHMIDT – She concurs.

MR. HEALY – He concurs.

A motion was made by Ms. Adelizzi-Schmidt and seconded by Mr. Healy, to grant the application as proposed. In favor: Healy, Petrozza, Phifer, Adelizzi-Schmidt, Shawl, Unsworth and Casaccio.

5. JIG NJ LP – BLOCK 836 LOTS 1, 2, 5.01 – BA 05-16

Applicants are requesting a use variance to construct duplexes where single family dwellings are permitted, a use variance for the number of principal structures on the property, front yard setback variance on Sumner Avenue and Bayview Drive, variances for maximum building coverage and to allow four curb cuts for the construction of two duplexes at 413 Bayview Drive and 3 Sumner Avenue in Strathmere.

ZONING BOARD OF ADJUSTMENT

MAY 12, 2016

PAGE 7 OF 9

Mr. Unsworth stepped down during this application.

Jeffrey P. Barnes, Esquire, represented the applicants. Mr. Barnes stated the subject lots are located in the RR zone. There are currently seven dwellings structures built in the 1930's or 40's located on 9,000 sq. ft. of land. There is no off street parking, curbing or sidewalks for any of the structures. The structures are built at elevation 7 which is below base flood. The structures utilize multiple cesspools. The applicant proposes to demolish the existing structures and construct two duplex structures. Each unit would have two bedrooms and off street parking would be provided. A new septic system would be installed.

Mr. Barnes

He submitted a 46 page package that was marked by the board solicitor as Exhibit A-1 and a 4 page packet with color renderings was marked A-2.

John E. Halbruner, Professional Engineer, Architect and Planner, was sworn. Mr. Halbruner described the existing non-conforming conditions on the site. Four of the non-conforming conditions would be eliminated. He stated that one of the proposed duplexes would face Bayview Drive and the second one would face Sumner Avenue. Each unit would be 1,700 sq. ft. with two bedrooms. The bonus room in each unit would not have a closet or an entry door and is not a bedroom. They are proposing eight parking spaces under the elevated building along with a new raised septic system. He stated the new septic is better for the environment than the current cesspools that overflow at times.

Mr. Halbruner testified there are two or multifamily uses in the area. Curb and sidewalk will be installed. They are proposing four curb cuts that require a variance. The garage door is recessed to allow room to park a vehicle in front of the structure. The open decks would provide light, air and open space. He reviewed the special reasons for granting the variances. The duplexes would advance the purpose of zoning since the proposed use is more conforming than what is there today. There existing structures have no historic significance. The property is secure from fire and flood. He reviewed the proposed landscaping using page 47 in the packet. It was decided the curb cuts would be reduced to 10 ft. to allow more room in between for parking.

The meeting was open to the public.

Scott Oliver, 1 E. Sumner Avenue, was sworn. He feels the proposed duplexes would be a great addition to the neighborhood and improve property values.

Joe Furey, 2 W. Sumner Avenue, was sworn. He has lived in Strathmere for 22 years. He feels the seven existing shacks are a hazard. He feels the two duplexes will fit in with the neighborhood.

ZONING BOARD OF ADJUSTMENT

MAY 12, 2016

PAGE 8 OF 9

Ted Kingston, 5 E. Willard Road, was sworn. He is opposed to granting the variances since the zoning allows single family dwellings. He stated that the master plan and the residents of Strathmere do not want duplexes.

Hearing no further comments the meeting was closed to the public and returned to the board.

Mr. Barnes stated that the duplexes would be for sale. Mr. Halbruner testified the units are not designed for year round living. He stated the property is better suited for two duplexes than the preservation and elevation of the existing seven structures.

The board was asked for their findings of fact.

MR. SHAWL – This property is located on the corner of Sumner Avenue and Bayview Drive. The property is zoned RR. There are multiple cesspools that service the seven small dilapidated shacks existing on the property. The applicant proposes to remove the existing structures and construct two new duplexes with a common septic system. Four of the seven existing nonconformities will be eliminated and three would be greatly reduced. Two use variances and several bulk variances are requested. The applicant proposes off street parking and curb and sidewalk. Each of the proposed units would contain two bedrooms and a bonus room. The exterior decks on the front of the buildings require setback variances. The structures are designed to be visually different. There would be two buildings rather than seven on site providing light, air and open space and reducing the density. Landscaping would be added according to the plan. There are other multiple dwellings in the area. Two Strathmere residents have testified they are in favor of the application and one that is opposed. Four curb cuts are proposed, one for each unit. Onsite parking would be provided. The existing structures do not meet many of the setbacks. He finds the applicant met the burden of proof required to grant the use variances and the bulk variances and that the development as proposed would be a great improvement over what is there.

MS. PETROZZA – She concurs. She finds the application can be granted using special reasons a, c, d, e, I and k. She finds the application can be granted without detriment to the public good and would not substantially impair the intent and purpose of the zone plan and master plan.

MR. PHIFER – He finds the C variances requested are less than usually proposed by residents of Strathmere looking to build or add onto homes on smaller lots. He finds that special reasons a, b, c, d and I apply.

MRS. TUTELIAN – She finds the intent of the RR zone is for single family residences. She does not believe that duplexes advance the purposes of zoning. She does not feel the proposed duplexes fit in with the neighborhood.

MS. ADELIZZI-SCHMIDT – She concurs with Mrs. Tutelian findings. She feels what is being proposed is a monstrosity and would take away from the character of the neighborhood.

MR. HEALY – He finds that special reasons exist to grant the variances.

MR. CASACCIO - He concurs and feels the application should be granted. He incorporates the testimony by Mr. Halbruner as his findings.

A motion was made by Mr. Phifer and seconded by Ms. Petrozza to grant the application with the conditions that the lots will be consolidated by a deed, a restrictive deed will be filed, the plans will evidence the curb and sidewalk around the property, landscaping will be designed acceptable with the board engineer, the plan will be revised to show the reduced 10' wide curb cuts. In favor: Healy, Petrozza, Phifer, Shawl, Casaccio.  
Opposed: Adelizzi-Schmidt, Tutelian.

### **RESOLUTIONS**

1. FRANK & NINA ZUCARELLI – BLOCK 811 – LOT 3 – BA04-16

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

2. MELIND & PARUL PANDYA – BLOCK 567 – LOT 57.07 – BA01-16

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

3. SPECIAL RESOLUTINO – ANNUAL REPORT

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

### **BILLS**

A motion to pay the vouchers was made by Mr. Phifer, seconded by Mr. Healy, and approved.

### **ADJOURNMENT**

A motion to adjourn the meeting was made by Mr. Healy, seconded by Ms. Petrozza, and approved. The meeting was adjourned at 11:05 p.m.

Submitted by,

Shelley Lea  
Secretary