

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT MEETING MINUTES OCTOBER 11, 2018

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, Karen Mitchell, Christopher Phifer, Andrew Shawl, Larry Trulli, Matthew Unsworth and Chairman Paul Casaccio.

Absent: Joseph Healy, Ted Klepac, Richard Mashura, Lynn Petrozza.

Also, in attendance were Jeffrey P. Barnes, Board Solicitor; Paul Dietrich, Board Engineer; Shelley Lea, Board Secretary and Zoning Officer.

APPROVAL OF THE SEPTEMBER 13, 2018 MEETING MINUTES

A motion to approve the minutes was made by Mr. Unsworth, seconded by Mr. Shawl, and approved. Abstain: Galderisi and Trulli.

NOVEMBER MEETING DATE – NOVEMBER 1, 2018 (FIRST THURSDAY)

SWEAR IN PAUL DIETRICH AND SHELLEY LEA

APPLICATIONS

1. WILLIAM & BRIDGET BAILEY – BLOCK 383 LOT 2 – BA 22-18

Application is for a temporary use variance to allow two principal structures on one lot and a recommendation to township committee to approve a temporary use permit to allow a trailer on site for one year at 1221 Mt. Pleasant Tuckahoe Road in Tuckahoe.

William Bailey, owner of the property, was sworn. He testified that he is seeking a use variance to temporarily place a mobile home on his property to live in while rebuilding his home that recently caught on fire due to lightning. They would like to be on the property while rebuilding their home. This is a 17-acre lot. The house and the proposed mobile home cannot be seen from the road. They would like to remain on site for security reasons. He agrees to remove the trailer from the site within 60 days after the issuance of a CO.

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

MR. UNSWORTH – William and Bridget Bailey are the owners of 1221 Mt. Pleasant Road. They are requesting a variance to have a trailer on site while they are reconstructing their home

that was damaged by fire. The Township ordinance allows a one-year temporary use permit to locate a trailer on the site. The applicant has agreed to remove the unit within 60 days after receiving a TCO or CO. He finds that living on site in a trailer is a reasonable request since the site is remote and security is important. There was no public comment.

MS. MITCHELL – Concurs.

MR. SHAWL – He finds the trailer will provide adequate light, air and open space and will not impact any neighbors.

MR. TRULLI – Concurs.

MRS. GALDERISI – Nothing to add.

MR PHIFER – Concurs.

MR CASACCIO – Reconstructing the house is being held up by the insurance company. It could be six months before a plan is secured.

A motion was made by Mr. Shawl and seconded by Mr. Unsworth to grant the application. In favor: Galderisi, Mitchell, Phifer, Shawl, Trulli, Unsworth and Casaccio.

2. ATLANTIC CAPE BUILDERS LLC – BLOCK 453 LOT 95 – BA 19-18

Applicant is requesting variances for lot frontage and width, 140 ft. required, 54 ft. proposed, to construct a single-family dwelling at 502 Route 50 in Petersburg.

Julius N. Konschak, Esquire, represented the applicant. He stated this lot was part of a subdivision created in 1989 when flag lots were permitted in this zone. The applicant purchased the lot in 2001. The applicant was not able to obtain a zoning permit since the grandfather clause in the ordinance indicates the lot had to be created prior to August 31, 1986. A frontage and width variance are needed to allow 54 ft. where 140 ft. is required. A wetland exemption from the State of New Jersey Department of Environment Protection, dated May 7, 2001 was included with the application. There is a 2018 septic permit and a permit from the Cape Atlantic Soil Conservation District.

Vincent Orlando, Professional Engineer with EDA, was sworn. Mr. Orlando testified the subdivision was granted in the late 1980's. The applicant has received a septic permit and a permit from the Cape Atlantic Soil Conservation Agency. The lot is 49,912 sq. ft. They are seeking variances for lot frontage and lot width as shown on the Variance Plan by EDA, dated 8/30/18. The flag staff portion of this lot will only be used as a driveway. There will be no development in this area.

Mr. Orlando testified the proposed single-family home is a permitted use in the "R" Center Residential zone. The lot was developed as a flag lot and was a permitted use. Flag lots are no longer permitted. For this reason, he feels that a hardship exists. He also finds that the benefits of granting the variances outweigh any detriments. He believes that four of the purposes of zoning are advanced which include c. the application provides light, air and open space since the setbacks are larger than required and the building coverage is only 2.27%; g. since the proposed use is a permitted use; e. since the lot exceeds the lot area requirements and m. since this is an efficient use of the land, meets the characteristics for an onsite septic, wetland buffers and ingress and egress. He further testified that granting the variances would not be a detriment to the public since it has always been a buildable lot and the applicant has been paying taxes. He does not see any detriment to the zoning ordinance or zoning plan since there is no proposed development

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within the flag staff. The applicant plans to clear only enough in the front to locate a 12 to 14 foot wide driveway.

Mr. Dietrich testified there is no additional land for the applicant to purchase to make the lot frontage conforming.

The meeting was open to the public.

Nathalie Neiss, 759 Route 50, Petersburg, was sworn. She asked if the property would be used as a rental. Mr. Konschak responded that the applicant is not sure yet if he will rent or sell the house.

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

MR. SHAWL – Atlantic Cape Builders LLC is the owner of 502 Route 50 in Petersburg also known as Lot 95 in Block 453. The property is on the south side of Route 50 and is in the R zone. This is what was referred to as a flag lot. The applicant is requesting variances for lot frontage and width, to allow 54 ft. where 140 ft. is required. The applicant proposes to construct a single family dwelling on the lot. The property is located in the “R” Center Residential zone. A variance for hardship could be granted since the property was subdivided when flag lots were permitted. The front property line is 205.68’ from Route 50. The house would not cast a shadow on the neighbor’s property and has sufficient light, air and open space. The narrow portion of the lot would be used for a driveway only and only limited clearing would be done. The variances could be granted without detriment to the public good and without impairing the intent and purpose of the zoning plan. One person from the public had questions regarding the use of the dwelling. He finds the variances can be granted since the intended use meets the permitted uses and the special reasons cited.

MR. TRULLI – Property taxes have been paid on the lot for a buildable lot.

MS. GALDERISI – She concurs.

MR. PHIFER – The applicant has proved that a hardship exists. And the variances can be granted without substantial detriment to the public good and without impairing the intent and purpose of the zone plan or zoning ordinance. He finds the benefits of granting the variances outweigh any detriment. He agrees with 3 of the 4 special reasons cited by Mr. Orlando.

MR. UNSWORTH – Concurs.

MS. MITCHELL – Concurs.

MR. CASACCIO – Concurs. He finds there is not any additional land available for the applicant to purchase to make the property more compliant.

A motion was made by Mr. Shawl and seconded by Mrs. Galderisi to grant the application with the standard conditions. In favor: Galderisi, Mitchell, Phifer, Shawl, Trulli, Unsworth, Casaccio.

3. KRISTINA WRIGHT – BLOCK 449 LOT 2 – BA 20-18

Applicant is requesting variances for side yard setback and distance between buildings for a 14’ x 40’ shed at 941 Upper Bridge Road in Petersburg.

Kristina Wright, 941 Upper Bridge Road, Petersburg, was sworn. She is seeking variances to place a shed 6 inches from the side property line. She testified this is the best location on the site

because of the septic location, security and limited clearing of trees. She stated the shed provides additional privacy between her pool and her neighbors pool. The shed would not be accessible if it were moved further from the property line. The only other location for the shed is in the rear of the property, however trees would have to be removed and additional fill would have to be brought in since the back of the yard is low, additional concrete would be needed and reinstallation of the fencing. She submitted photographs that she took within the past two days that accurately depict how the property looks today. Exhibit A-1 are two photos of the shed, one taken from her neighbor's yard and one taken from her back yard. Exhibit A-2 is a photo of the shed taken from the road. A-3 is a photo of the neighbor's fence. She testified that emergency vehicles could access the rear yard using the 9 ft. between the house and the shed. The shed has been on the property since July or August 2018. The shed is used for storage. She has eight classic cars. Four of the cars are kept in the existing detached garage. There are currently two small sheds on the property, one will be dismantled and the other is for pool storage.

The meeting was open to the public.

Jane Powell, 921 Upper Bridge Road, was sworn. She lives next to the applicant's property. She has had the pool in her yard for 12 years. She has an 8-year-old grandson that likes to climb. She can touch the shed from her property and is concerned her grandson will climb onto the shed and possibly try to dive into the pool. She has lived here for 47 years and has never had a problem with neighbors. She stated the shed is an eyesore and a safety concern. She is opposed to the application. She submitted nine photos that she took in July 2018. She stated the photos accurately depict what exists today. She described each of the nine photos that were marked as Exhibit O-1 through O-9. The photos show the closeness of the building from her fence, the shrubs and a shadow on her pool.

Nancy Arsenault, 530 Perry Road, Petersburg, was sworn. She testified there is a distance of 10 ft. from her parent's pool to the corner of the shed. She feels this is a safety concern. She is upset that there were no permits obtained prior to installing the shed. She believes there is a better location on the site for the shed.

Ms. Wright testified the shed was on another property in the township and she relocated it here. The windows and doors are easily seen from her home for security. The septic is located on the other side of the house. This is the most accessible and most secure spot on the property. This area also requires the least amount of tree removal and fill.

Nathalie Neiss, 759 Route 50, Petersburg, was sworn. She believes the shed should be located near the detached garage. She does not feel the neighbor should have to be burdened by the location of the shed. She feels the shed should be torn down or moved since no permits were acquired. The board members explained the permit process to Ms. Neiss. She feels granting the variance would set a precedent.

Ms. Wright testified that A-1 was taken yesterday at 5:30 p.m. The photo shows the shadow of the shed is not on the pool. She testified that electric is roughed into the shed, however it is not run to the electric in the house. Ms. Wright argued that the neighbor's porch is approximately the same distance to their swimming pool as her shed is.

Jane Powell, previously sworn, stated that her porch is further away from the pool than the shed.

Nathalie Neiss, previously sworn, believes the structure is a garage and not a shed.

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

MR. UNSWORTH – Kristina Wright has installed a 14' x 40' shed on her property at 941 Upper Bridge Road without a permit. The structure is 6 inches off the side property line and 9 feet from the principal structure. The two variances requested are for side yard setback and distance between buildings. She has testified this is the best location for security, design of the structure and buffering between her property and the neighbor. There was public comment not in favor of the application. Numerous concerns have been raised about the location of the shed and some of the codes it is violating such as the fire code. There have been complaints about shading and that the shed blocks the light and air due to the proximity to the neighbor's pool. His biggest concern is that the shed is within 10 ft. of the neighbor's pool. He is concerned with kids jumping off the shed into the pool and not making it. He finds there are other areas on the lot where the structure could go. He finds that a hardship has not been demonstrated for keeping the structure in this location. Putting the shed in this location creates other hardships and code violations. He is not opposed to a shed being located on the property, however he does not feel the location is appropriate.

MS. MITCHELL – Concurs.

MR. PHIFER – He finds the applicant has not proved a substantial hardship in terms of why the shed is located where it is as opposed to other areas on the property. He finds the shed being located where it is creates other issues such as fire and safety. He feels the location of the shed is not fair to the neighbors.

MS. GALDERISI – Concurs. This is a large structure. If it were smaller she might look at it differently. She is concerned about emergency vehicles being able to get around the shed.

MR. TRULLI – He finds there are multiple things that need to be addressed and therefore is not in favor of the application.

MR. SHAWL – Concurs.

MR. CASACCIO – The applicant did not present testimony using the C1 or C2 criteria and does not meet the negative or positive criteria required under the ordinance.

A motion was made by Ms. Mitchell and seconded by Mr. Shawl to grant the application. In favor: Opposed: Galderisi, Mitchell, Phifer, Shawl, Trulli, Unsworth, Casaccio.

4. CRAIG & CAROL SCHULTHEIS – BLOCK 566 LOT 33 – BA 21-18

Application if for a two-lot minor subdivision, a use variance for the expansion of a non-conforming use, variance pursuant to NJSA 40:55D-35 as proposed lot 33.01 does not abut a street and variances for front and side yard setbacks and distance between buildings on proposed lot 33.02 located at 1222 Route US 9 South in Palermo.

Robert Belasco, Esquire, represented the applicants. He stated the property contains a commercial use, Upper Sandwiches and a pre-existing non-conforming residential use. The property is in the CM2 zoning district. The lot is a little over 6 acres. The applicant proposes to separate one acre from the property to separate the residential and commercial uses.

Carol Schultheis, 20 Mockingbird Lane, Petersburg, was sworn. She has owned the property since 2007. She testified that she has a tenant in the commercial building and her son occupies

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the residence. Eventually her son would like to purchase the house. There are no changes or new construction proposed on either lot. The existing easement provides ingress and egress from the property. This easement is recorded with the County Clerk and was there when she bought the property.

Vincent Orlando, Professional Planner, was sworn. He was present to answer any questions about the proposed subdivision shown on the Plan of Minor Subdivision by The Martinelli Group, dated 10-2-15 and last revised 7-9-18. The access is from a 12 ft. wide access easement. The two uses would have to be separated for someone to obtain a mortgage for the house. Proposed lot 32.02 would be 5.103 acres and would contain the commercial use. Proposed lot 33.01 would be 1 acre and would contain the single-family dwelling. Single family homes are not permitted in the CM2 zone, so they are seeking a D variance even though the use is pre-existing non-conforming. By reducing the lot area, they are technically exasburating the situation. Only the zoning board of adjustment can hear an appeal under NJSA 40:55D-35 indicating a lot must abut an improved street. The easement has existed for about 40 years. He feels that special reasons g and n apply to this application. It is his opinion the variances if granted would not be a detriment to the public good and would not substantially impair the intent or purpose of the zoning plan or zoning ordinance. He stated the bulk variances requested are pre-existing. He feels these non-conforming conditions are hardships and can be granted using the C 2 criteria. He feels the requested variances for the lot with the commercial use could be granted using C 1 and C 2 criteria since they are pre-existing and not being changed. He finds there is no substantial detriment to the public in connection with this application or any substantial impairment to the zoning plan or zoning law.

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

MR. UNSWORTH – Craig and Carol Schultheis are the owners of 1222 Route 9 in Seaville. The lot is more than six acres and zoned CM2. The applicant is seeking to subdivide the property to create a one-acre parcel with an existing single-family residence. The bulk variances being requested are pre-existing non-conforming. Access to the property is from an existing 12 foot wide easement on lot 32. A use variance is needed because of the single-family residence in a commercial zone. He concurs with the special reasons stated by Mr. Orlando. He finds there is no detriment to the public good since they are not proposing to change the use of the property. The proposed subdivision cleans up the property by separating the two uses.

MS. MITCHELL – Concurs.

MR. SHAWL – Concurs.

MR. TRULLI – Concur.

MS. GALDERISI – Concurs.

MR. PHIFER – Nothing to add.

MR. CASACCIO – Nothing to add.

A motion was made by Mrs. Galderisi and seconded by Mr. Unsworth to grant the application with the standard conditions. In favor: Galderisi, Mitchell, Phifer, Shawl, Trulli, Unsworth, Casaccio.

RESOLUTIONS

1. CHRISTOPHER ANTOLINI – BLOCK 599 LOT 50 – BA 15-18

A motion to adopt the resolution was made by Mr. Unsworth and seconded by Mr. Shawl. In favor: Mitchell, Phifer, Shawl, Unsworth, Casaccio. Abstain: Galderisi and Trulli.

2. THOMAS TOWER / ADVANTGE RENTAL INC – BLOCK 453 LOT 180.01 – BA 17-18

A motion to adopt the resolution was made by Mr. Unsworth and seconded by Mr. Shawl. In favor: Mitchell, Phifer, Shawl, Unsworth, Casaccio. Abstain: Galderisi and Trulli.

BILLS

A motion to approve the bills was made by Mr. Unsworth, seconded by Mrs. Galderisi, and approved.

ADJOURNMENT

A motion was made by Mr. Phifer and seconded by Mr. Unsworth, to adjourn the meeting. The meeting was adjourned at 8:57 p.m.

Submitted by,

Shelley Lea
Board Secretary