

# **UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT**

## **MEETING MINUTES**

### **APRIL 2, 2019**

The Upper Township Zoning Board of Adjustment held a special meeting 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, Ted Klepac, Richard Mashura, Lynn Petrozza, Christopher Phifer, Andrew Shawl, Larry Trulli, Matthew Unsworth, Paul Casaccio.

Absent: Joseph Healy, Karen Mitchell.

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

#### **SWEAR IN PAUL DIETRICH AND SHELLEY LEA**

#### **APPLICATIONS**

1. **JAMES H. SCHRODER AND AFFORDABLE CONCEPTS INC – BLOCK 811**  
**LOTS 4, 5, 6 & 7 – BA 03-19**

Julius N. Korschak, Esquire, represented the applicant. He stated that 15,432 sq. ft. of lot 4 would be consolidated with lots 5, 6 & 7 to make one lot. A 950 sq. ft. portion of lot 5 will be consolidated with lot 4. Ocean Beach Resort would then become larger and more into compliance with the lot area requirement.

Vincent Orlando, Professional Engineer and James Schroder, 98 Corson Tavern Road, Seaville, were sworn.

Mr. Orlando testified this is a lot line realignment and no new lots are being created. He believes this is an appropriate location, appropriate population density and a more efficient use of the land. He finds there is no substantial detriment to the zone plan or zoning ordinance and no substantial detriment to the public good since there is no development proposed. Because of the adjustment to the lot line and negotiations with the owner of lot 4, the lot line was moved 10 ft. to the north creating a 0 ft. setback between the property line and the trash enclosure. He finds this is a C1 variance since the hardship is that the trash enclosure has been here for years.

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Mr. Dietrich testified the subdivision meets the map filing ordinance. He requested that a concrete monument be installed along the new lot line possibly before the phragmites line.

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

MR. UNSWORTH – James Schroder is acquiring additional land from Affordable Concepts Inc., the owner of lot 4, to increase the area of the trailer park. The property line would be moved 10 ft. creating a 0 ft. setback between the trash enclosure and lot 4. The applicants are not proposing any physical changes to the property. He sees no impact to the public good.

MS. PETROZZA – She concurs.

MR. SHAWL – Testimony was given that there is no new development being considered at this time. A special reason for granting the variance is this is an appropriate location and population density. Mr. Orlando believes that granting the variances would not have any detrimental effect on the zoning plan or ordinances or any detriment to the public. The trash enclosure has been in this location for 10 years. There was no public comment.

MR. MASHURA – He concurs.

MR. PHIFER - Nothing to add.

MRS. GALDERISI – Nothing to add.

MR. TRULLI – Nothing to add.

MR. CASACCIO – Find the lots will be consolidated by filing of the subdivision plat.

A motion to grant the application with the standard conditions was made by Mr.

Unsworth and seconded by Ms. Petrozza. In favor: Galderisi, Mashura, Petrozza, Phifer, Shawl, Unsworth, Casaccio.

2. HARRIET LANE LLC /2058 SOUTH SHORE ROAD LLC – BOCK 567 LOT 24 – BA 25-18

Application is for preliminary and final site plan approval, a use variance for density and a revision to the Affordable Housing Plan to construct an additional 11 rental affordable housing units on Harriet Lane in Palermo.

Mr. Casaccio stepped down during discussion and voting on this application due to a conflict. Mr. Unsworth acted as board chairman during this application.

Julius Konschak, Esquire, represented the applicants.

Harry Vanderslice, Victoria Lane, Ocean City, a representative of the applicant and Ron Collins, 1731 Route US 9 South, President of the Osprey Point Home Owners Association were sworn.

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Vincent Orlando, Professional Engineer and Planner and Certified Landscape Architect, was previously sworn, Harry Vanderslice, representative of the applicant, Rick Hogg, Co-council has assisted the applicant in their COAH matters, Ron Collins, President of the Osprey Point Home Owners Association

Mr. Korschak stated that in 2012 the planning board began creating a new Mobile Home Park zone. Two sites were approved, Osprey Cove being one of them. In 2016 Osprey Cove received their final approvals to construct an age restricted community. The applicant received a variance to allow the required affordable housing units to be off site and not in the age restricted mobile home park. The reason for the offsite affordable units is that no one under 18 is permitted to live in Osprey Cove. One of the sites they identified in 2016 was Harriet Lane, a 6-acre parcel formerly used for housing by the Coast Guard. There are 9 existing single-family homes on this private lane. The township has approved a deed restriction for the 9 units. The applicant engaged Triad Associates to be their administrative agent. He stated there is a process in qualifying low/moderate income people to occupy the units. There is a 40-page lease. Triad advertised the units for sale and lease and it was discovered there was no interest in the sale units. Over a period of one year they did not get one qualified applicant to purchase a sale unit. The township along with the applicant have been working on bringing the ordinances and the affordable housing component in line with the COAH requirements. In the settlement the township made with fair share housing the applicant agreed to 20 rental units instead of 7 rentals and 21 sales. Even though the numbers are lower than before the township will now get 40 credits rather than 35 credits. They had filed an application with the planning board in June identifying the property and requesting to add 11 units. In October the applicant discovered a D variance would be needed for density and the application would be heard by the zoning board. He stated the 9 existing units on Harriet Lane are rented and occupied.

Mr. Dietrich agrees with the summary made by Mr. Korschak. He explained that in 2008 the township formed a subcommittee to develop fair share housing regulations since this was a sensitive area and residents had concerns. One concern was that the ordinance permitted moving the affordable housing obligation offsite if it were placed in existing housing. At that time COAH was not certain about using mobile homes as affordable housing. In order to do affordable housing in the mobile home park the tenant owns the trailer and has to pay a land rent to the park owner. Under the COAH rules there is no formula or method of how to determine what the affordable housing cost. Therefore, the affordable units in a mobile home park must be rental units, which are rented by the park owner. The township did a market to affordable housing and it was very difficult to find a qualified buyer and the hardest part was finding a bank to work with the purchaser and the deed restriction required by COAH. The mobile home park ordinance indicates that any units within the park that are part of the 20% affordable had to be rental units. The COAH regulations limit the number of age restricted unit's the township can use to satisfy their overall obligation to 25%. The township plans to utilize the 25% on a township owned property across from the senior center in Palermo. The township encouraged the age restricted mobile home parks but the affordable units have to be

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family units. There are several smaller affordable housing projects in the township. This is a learning experience for the applicant and the township. He explained the township is not amending the applicant's previous approval but looking at increasing the housing density. He added that the settlement agreement does not include where the 20 units would be located.

Richard Hoff, Esquire, co-council, has assisted the applicants in their COAH matters. He indicated this is a unique matter and he has never seen anything like it. Most of his practice is affordable housing. He referred to growth share, a set of rules requiring that for every so many houses built an affordable unit must be built. A lot of times the unit was not built since there was no compensation for the developer. The supreme court since has thrown this out and the township like other towns are forced to comply with new rules or a reiteration of the old rules. This applicant is required to supply 20 rental units. The township needs the rental units as part of their court approved affordable housing settlement with the fair share housing center. There is no longer a for sale option and all 20 units must be rentals.

Mr. Hoff testified this is a D variance for density. He stated that when dealing with affordable housing it is important that the units are in the same area since the owner is responsible for everything. From a maintenance and occupational standpoint having rental units scattered around a township is not ideal because it is not as easily managed. Mr. Dietrich agreed that management of rental properties is key.

Vincent Orlando, previously sworn, testified that a D5 variance is needed for density and a D1 variance is needed to build new units. The current ordinance permits offsite affordable housing only in existing structures. The ordinance does not allow new construction for affordable units. Mr. Dietrich testified the subcommittee saw there were a lot of potential empty houses due to foreclosure that could be fixed up and used. There were also a lot of vacant undersized lots that could be used to build an affordable unit.

Mr. Orlando testified Harriet Lane is an existing residential development that was built in the late 40's or early 50's. There are 9 small residential units that were used for Coast Guard housing and a centralized septic system. This is a private road that requires no maintenance by the township. The property has gone downhill in the past 15 years and the homes were abandoned. The applicant purchased the property and renovated the 9 homes, added curb and sidewalk, fixed the road and added landscaping. The applicant proposes to construct 4 new buildings consisting of 11 units on the north side of the property. The units would be serviced by the existing cartway. Each structure would contain 2 or 3 units and would be the same style building as the existing bungalows. They plan to add fencing along the perimeter and increase the landscaping in certain areas. The fence would be located 25' inside of their property so they can maintain the landscape buffer on the north and west side of the property. The proposed stormwater management meets the requirements. There will be one central septic system for the units.

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Mr. Orlando testified the property is 6.018 acres and the density for 20 units would be 3.32 units per acre. He testified the density at Osprey Point including the 9 acres of wetlands and wetland buffers is 3.21 units per acre. Analyzing the density without the wetlands it would be 4.07 units per acre. He finds the density and open space proposed by the applicant is compatible with the neighborhood.

Mr. Orlando testified the applicant would be responsible for all maintenance on the property. There would be a 30-year deed restriction on the property to enforce this. He finds the D5 variance can be granted using 40:55D-2 ( e ) and ( m ). He believes this is an appropriate population density for this location given its proximity to Osprey Point. He believes the D1 variance can be granting using special reason ( a ) due to the affordable component in this particular case and that affordable housing is inherently beneficial. He believes there would be no detriment to the zone plan since the Master Plan identifies this site as affordable. He doesn't feel that expanding the number of units from 9 to 20 is a detriment to the zoning plan or ordinance. He believes there would not be any detriment to the public good since the density is higher on the property to the north. Having all the units in one location increases the visual aspect of this application and increases its success.

The board took a short recess.

Mr. Collins testified that initially the residents of Osprey Point had a lot of concerns about this project. A meeting was held with the applicant and Mr. Korschak and most of their concerns were addressed at that time. The associate members of the home owner's association took a vote and only 2 out of 42 were opposed to the application.

Mr. Korschak stated the Township has protection that the units would be constructed through the issuance of the Certificates of Occupancy and there have been discussions with the township regarding performance bonds.

Mr. Hoff stated the township has an obligation to provide a realistic obligation to provide affordable housing. By giving the approval for Osprey Cove the township has given them the obligation to provide a certain number of units. After a certain point there are no more CO's issued if the housing is not in place. The market determines if the units are built. The township must put zoning in place so that it can be achieved. Mr. Dietrich stated that every year the township must report to the court the number of units completed. The applicants would not have to build the affordable units if they decide not to complete all the approved units in Osprey Cove. Mr. Orlando testified this is a tremendously successful project and that all the approved units in Osprey Cove will be built within 18 months or sooner. Mr. Korschak stated the township has approved a deed restriction for the existing 9 units to be used as affordable housing for the next 30 years. They intend to file the same deed restriction for the 11 proposed units.

The meeting was open to the public.

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James Schroder, 98 Corson Tavern Road, was sworn. He is in favor of the application. The applicants are making a nice street where there was run down coast guard housing. He feels this is a benefit to the township. This proposal fulfills the obligations of Osprey Cove and the township. He does not see anything negative in granting the variances.

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

MR. SHAWL – Harriet Lane LLC is requesting to construct affordable housing on Harriet Lane known as Block 567 Lot 24. This is a 6-acre lot in Palermo. Jules Konschak, Esquire, represented the applicant and Mr. Hoff acted as co-council and provided background information on affordable housing. The project was started in 2012 when the township created the mobile home park zoning district. Between 2012 and 2015 the township zoning plan was not compliant with COAH. In 2017 and 2018 the township revised the ordinances to meet the COAH requirements. Rental units increase the COAH points. The applicant has requested a D5 variance for density. There are currently 9 occupied units on this site. The requirements in the MH zone allow the affordable housing to be located on a different site within the township in existing homes. COAH has determined that mobile home parks are not good for affordable housing. The proposed density is 3.32 units per acre. The site is adjacent to Osprey Point where the density is greater. Mr. Hoff indicated the situation is unique. The township ordinance does not permit new buildings to be used for affordable housing but they are permitted in existing buildings. The applicant has renovated the existing homes on Harriet Lane which was previously used for Coast Guard housing. These affordable units are deed restricted for 30 years. They are proposing to construct 11 new units across from the existing houses on Harriet Lane. The new units will look like the existing homes on the street. The fencing will be located 25' inside the applicant's property to provide a buffer. The site is unique due to its location, size and configuration. Stormwater runoff can be kept on site. Wastewater is treated on site. The proposed units are two bedroom. A deed restriction is required for 30 years and maintenance is the responsibility of the applicant. Testimony has been provided that its better to have all the units in one location rather than scattered all over the township mostly for maintenance reasons. The purposes of zoning will be advanced. The general welfare will be enhanced since this will provide more residential opportunities for different economic levels. There is no requirement in the ordinance for recreational areas. The units will conform to the setback requirements. A cul-de-sac will be added to the end of the road. There will be parking added for the new units. Mr. Collins, President of the Osprey Point Home Owners Association, testified the concerns of the residents have been addressed and they have a written agreement. Paul Dietrich has indicated that since there is existing housing on the street, multifamily housing nearby and existing COAH units, the property is suitable for this type of development. The applicant has a commitment to build affordable units to continue developing Osprey Cove. Public comment was in favor of the application. He finds the site is particularly well suited for the proposed density.

MR. TRULLI – He concurs.

MR. MASHURA – He appreciates the team work between the applicant and the professionals and the residents. He finds this is a wonderful project.

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MRS. GALDERISI – Nothing to add.

MR. PHIFER – Nothing to add.

MS. PETROZZA – She concurs.

MR. UNSWORTH – He concurs.

A motion was made by Mrs. Galderisi and seconded by Ms. Petrozza to grant preliminary and final site plan approval to construct eleven affordable housing units, a use variance to allow multifamily dwellings, a D5 density variance and variance to allow new construction to satisfy the affordable housing commitment, with the condition a deed restriction is placed on the units. In favor: Galderisi, Mashura, Petrozza, Phifer, Shawl, Trulli, Unsworth.

**ADJOURNMENT**

A motion to adjourn the meeting was made by Mrs. Galderisi, seconded by Ms. Petrozza, and approved. The meeting was adjourned at 9:37 p.m.

Submitted by,

Shelley Lea  
Board Secretary