

# **UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT**

## **MEETING MINUTES**

### **JULY 11, 2019**

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, Richard Mashura, Karen Mitchell, Christopher Phifer, Andrew Shawl, Larry Trulli, Vice Chair Matthew Unsworth.

Absent: Sherrie Lisa Galderisi, Ted Klepac, Lynn Petrozza, Paul Casaccio.

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**

#### **APPROVAL OF THE JUNE 13, 2019 MEETING MINUTES**

A motion to approve the minutes was made by Mr. Mashura, seconded by Mr. Trulli, and approved.

#### **TABLED APPLICATIONS**

1. KAROLANN KEMENOSH – BLOCK 723 LOT 56 – BA 18-18

This application was tabled until August 8, 2019 at 7:30 p.m. There will be no further notice required.

#### **APPLICATIONS**

1. MICHAEL PETTIT – BLOCK 453 LOT 10.09 – BA 08-19

Applicant is requesting a side yard setback variance, 15' required, 14' proposed, for a 30' x 40' detached garage at 1 Ella Layne in Petersburg.

Michael Pettit, 1 Ella Layne, owner of the property, was sworn. He testified the contractor made a mistake when constructing the garage and built it 1' too close to the property line. He submitted a photo of the garage that was taken last week that accurately depicts how the property looks today. He was not aware that the garage didn't

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comply until he submitted his As Built Survey to the zoning office. He stated that his father is the owner of the adjacent property. The location of the garage does not affect the well or septic. The garage is built on an angle so not the entire structure is non-conforming.

The meeting was open to the public.

Holly Crain, 939 Route 610, Petersburg, was sworn. She has no problem with the garage. She stated the applicant's father will be building a house next door and she doesn't want the same mistake to be made again. She stated the applicant is a good neighbor.

Nathalie Neiss, 759 Route 50, Petersburg, was sworn. She asked about schedule A in the zoning ordinance.

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

MR. SHAWL – Michael Pettit is the owner of 1 Ella Layne in Petersburg, New Jersey also known as Block 453 Lot 10.09. The applicant has constructed a single-family home and a detached garage on the property. The As Built Survey showed the garage is 1' closer to the property than permitted. The property is in the R zone. The applicant is requesting a side yard setback variance to allow 14' where 15' is required. The garage is aesthetically pleasing and matches the house. There is 40' between the garage and the neighbor's property line. The property has frontage on Route 610 also. A neighbor had concerns about future encroachments into the setback. The engineer testified that detached garages are a permitted use. He finds the variance can be granted based on the testimony given.

MR. TRULLI – He agrees.

MR. MASHURA – He agrees. He finds the average of the setback is 15'.

MR. PHIFER – Nothing to add.

MR. HEALY – Nothing to add.

MS. MITCHELL – She concurs.

MR. UNSWORTH – He concurs. He finds the variance can be granted without any detriment to the public good.

A motion to grant the application as proposed with the standard conditions was made by Mr. Shawl, seconded by Mr. Phifer, and approved. In favor: Healy, Mashura, Mitchell, Phifer, Shawl, Trulli, Unsworth.

2. ANDREW SIMMERMAN – BLOCK 659 LOT 1.02 – BA 09-19

Applicant is requesting a variance to allow a 6' high fence in the front yard where 4' is permitted at 136 Route US 9 North in Marmora.

Andrew Simmerman, owner of 136 Route US 9 North in Marmora, was sworn. His property has frontage on Route US 9 North and N Old Tuckahoe Road. He would like to

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create a backyard with privacy. He would like to install a 6' high vinyl fence 15' from the property line on N Old Tuckahoe Road. The ordinance requires the fence be 50' off the property line. The survey shows there is a 2' difference in the elevation between North Old Tuckahoe Road and his yard. For this reason, a 2' high fence would not provide adequate privacy and safety for his family. The fence would be behind the trees along N Old Tuckahoe Road. One of the photos he submitted shows a painted line in the grass to show the setback line. Other photos show where the fencing would be installed. He proposes to tie into the neighbors existing fence. The trees on the property would remain.

Mr. Dietrich testified there would not be any issues with the site triangle because of the distance the fence would be from the road and from the driveway. He finds there would not be any negative impact to the neighbors.

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

MR. SHAWL – Andrew Simmerman is the owner of 136 Route US 9 North in Marmora also known as Block 659 Lot 1.02. This is an irregular shape lot located at the intersection of Old Tuckahoe Road and Route 9. He is requesting a variance to construct a 6' high vinyl fence 25' from the property line along Old Tuckahoe Rd N where only a 4' high fence is permitted. Photos were provided showing the neighbors fencing that he will tie into. The fence would be located behind a row of trees along the road. The fence would create a more private and safer back yard for the applicant and his family. Old Tuckahoe Road is a higher elevation than the applicant's yard so a 4' high fence would not offer any privacy. There is an existing two-story house and a detached garage on the property. He finds there is no detriment to the general welfare or the zoning plan.

MR. TRULLI – Nothing to add.

MR. MASHURA – Nothing to add.

MR. PHIFER – He concurs.

MR. HEALY – He concurs.

MS. MITCHELL – She concurs.

MR. UNSWORTH – He concurs. The board engineer has confirmed there are no site triangle issues. There is an existing buffer of trees inside the 25' wide setback that will considerably hide the fence.

A motion was made Mr. Healy and seconded by Ms. Mitchell to grant the application as proposed with the standard conditions. In favor: Healy, Mashura, Mitchell, Phifer, Shawl, Trulli, Unsworth.

3. SEAVILLE VILLAGE CONDOMINIUM – BLOCK 559 LOT 21.06 – BA 08-15

Applicant is requesting preliminary and final site plan approval, a three-lot minor subdivision and a use variance for the expansion of a non-conforming use needed to

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subdivide the property into 3 lots, a use variance to allow the existing commercial businesses, two with apartments attached, to remain in a residential zone, a variance to allow a 52.5 sq. ft. free standing sign, 30 sq. ft. building mounted sign and 945 sq. ft. outside display area on proposed lot 21.06 located at 3075 Route US 9 South in Seaville.

F. Thomas Hillegass, Esquire, represented the applicant. Michael Butterfield, 33 Fishing Creek Road, Cape May Court House and Matthew Hender, Licensed Professional Planner and Landscape Architect, were sworn.

Mr. Hillegass confirmed the applicant is the condominium association. He agreed to provide a resolution authorizing the condominium association to make the application in addition to the corporate disclosure. There are currently three buildings on the property, and they would like to subdivide the property into three lots so each building would have its own lot.

Mr. Butterfield testified he owns the service station in the middle and the furniture store on the south of the property. Frank DiRenzo is the owner of the building on the north side containing the restaurant with apartments above. He reviewed the hours of operation for the furniture store and J's Automotive. There is a 600 sq. ft. apartment above the service station that is currently rented. His other building is Land and Sea Furniture where they sell Amish furniture and other Amish décor and home goods. He is in the insurance business and works at the store on Saturdays. There are 3 other employees. His reason for wanting to subdivide is to clean up the property. He stated the property appears to be three separate lots but its not.

Mr. Hillegass stated it looks like three buildings and three separate properties. There have been issues over the years between the owners of the association about how the property is maintained. Since they can't buy Mr. DiRenzo out of his property the logical thing to is to create three separate lots with three separate retables. This would provide Mr. Butterfield with more flexibility and differentiates it from Mr. DiRenzo's property. They have had to wait 4 years for Mr. DiRenzo to attempt to bring his property into compliance so they could bring this application to the board. There is a great deal of police action and people hanging out.

Mr. Hender testified in regard to the location of the property. He referred to the Plan of Minor Subdivision prepared by DeVaul Survey LLC, last revised 6/27/19 and the Variance Plan by EDA last revised 7/1/19. The new lot lines mirror the existing condominium division lines.

Mr. Hender testified the lot is narrow and shallow. Variances are needed for lot frontage, lot width, coverage and setbacks. There are no proposed changes to the buildings. He sees no detriment to the neighbors and no detrimental affects to the zoning plan or zoning ordinance. A sign variance is needed to allow a 24 sq. ft. sign to be attached to the roof of the furniture store and a 52.5 sq. ft. freestanding sign to identify the buildings. The property is in the R2 zoning districts which does not allow signs. He

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feels the variances can be granted using special reasons a and h. He feels that granting the application would provide more efficient ingress and egress and better delineate the parking. Handicap parking could be added to bring the property more into compliance. There would also be an addition of a 940 sq. ft. display area for furniture.

Mr. Dietrich stated the buildings pre-date the zoning ordinance. He stated the existing lot does not conform to the ordinance requirements. The rear yard setback is the only thing that complies. The lot currently does not conform with the front or side setbacks or the coverages. He stated there is no delineated parking currently. He feels that granting the application would give the applicant the ability to provide more conforming parking and better access. The property would remain non-conforming if approved. He stated there is already a condo line that separates the buildings. He feels that having individual buildings on separate lots is better.

Solicitor Barnes asked the applicant to provide a document to be attached to the resolution indicating what variances are being requested for each lot.

Mr. Hillegass stated that each lot would have their own well and septic. They will apply for the permits if the subdivision is approved. There will not be any cross easements.

There was discussion regarding emergency vehicles.

The meeting was tabled until August 8, 2019 for the applicant to provide existing and proposed conditions. No further notice of this application will be given.

### **RESOLUTIONS**

#### 1. LAURA KASPER – BLOCK 12 LOT 25 – BA 07-19

A motion to adopt the resolution was made by Mr. Shawl and seconded by Mr. Trulli.  
Abstain: Unsworth.

#### 2. DANIEL EICHHORN – BLOCK 558 LOT 24.02 – BA 06-19

A motion to adopt the resolution was made by Mr. Shawl and seconded by Ms. Mitchell.  
Abstain: Unsworth.

### **INVOICES**

A motion to pay the bills was made by Mr. Mashura, seconded by Mr. Trulli, and approved.

### **ADJOURNMENT**

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A motion to adjourn the meeting was made by Ms. Mitchell and seconded by Mr. Healy.  
The meeting was adjourned at 9:07 p.m.

Submitted by,

Shelley Lea