

# **UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT MEETING MINUTES FEBRUARY 13, 2020**

The Upper Township Zoning Board of Adjustment meeting 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, Lynn Petrozza, Christopher Phifer, Larry Trulli, Matthew Unsworth, Chairman Paul Casaccio.

Absent: Sherrie Lisa Galderisi, Ted Klepac, Andrew Shawl.

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

## **APPROVAL OF THE DECEMBER 12, 2019 AND JANUARY 9, 2020 MEETING MINUTES**

A motion was made by Mr. Unsworth and seconded by Ms. Petrozza to approve both the minutes. The motion was approved.

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

## **NEW APPLICATIONS**

### **1. CARLOS JAVIER GUTIERREZ – BLOCK 310 LOT 15 – BA 19-19**

Applicant is requesting a use variance to allow a second dwelling unit in an existing detached garage at 2324 Route 50 in Tuckahoe.

Kristopher Facenda, Esquire, represented the applicant. He stated the property is in the “TV” Tuckahoe Village zone. Two single family dwellings are not permitted on one lot

in this zone. The applicant is seeking a use variance to legalize an existing garage that was converted into living space without prior approvals. Neither the applicant or the previous owner converted the garage into livable space. Mr. Gutierrez purchased the property in 2018 and at that time the garage was already converted into residential space. Approvals for pre-existing non-conforming conditions are also needed.

Raymond Leps, 508 Beach Drive, Corbin City, NJ, was sworn. He sold the property to the applicant in 2018. The front of the garage is used for storage and the back portion was living space when he sold it to Mr. Gutierrez. The garage is set up like an efficiency apartment. He did not convert the garage into living space. He provided a copy of a photo taken in 1992. The photo accurately depicts the building at that time. His son and his friends used the room to play their guitars and drums when they were young.

Carlos Gutierrez, 2324 Route 50, Tuckahoe, NJ, was sworn. He took the picture of the garage that was marked A-2. He testified the photo accurately depicts what the garage looks like currently. Three additional photos were submitted showing the interior of the apartment. The photos were marked A-3, A-4 and A-5. He uses the apartment for his family from May until October. He doesn't rent the space for money. He is willing to restrict the use to family members only.

Mr. Leps testified there was not a kitchen in the garage apartment when he purchased the property. He put the kitchen in after he bought the property. There was concrete and the walls were built when he purchased the property. There are smoke detectors in the residential space.

Ms. Lea testified that no permits were found for the conversion of the garage into living space. The property is assessed as a single-family dwelling with a detached garage.

Vincent Orlando, PE, was sworn. He is familiar with the site and surrounding area. His office submitted the aerial and the zoning schedule. He referred to a survey by The Martinelli Group dated 10-22-18. A single-family dwelling exists on the property along with a 720 SF one-story accessory building containing a storage area and 567 SF efficiency unit. A small lean-to behind the garage requires a variance to allow 3.8' where 10' is required between buildings. The property is serviced by an on-site septic system. They agree to deed restrict the apartment so it can't be rented for profit. He feels special reasons a and h apply. There is no substantial detriment to the public good since the building has been here for at least 25 years. There is no detriment to the zone plan or zoning ordinance since this is an appropriate type of development in the TV zone. A neighbor has requested fencing be installed along the rear property line of lot 13.01 to establish a better buffer. The distance between buildings is not being exasperated.

Mr. Mashura suggested removing the cooking equipment in the apartment so that it is not a fully separate operational unit.

The meeting was open to the public

Sally Bready, 81 Route 49, Tuckahoe, NJ, was sworn. She is concerned about the septic since there has been more activity there recently than there was before. She requested a 6' high solid fence since her daughter has live stock and a dog on the adjacent property.

Scott Miller, 2322 Route 50, was sworn. He is in favor of the application.

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

MR UNSWORTH – Carlos Gutierrez, owner of 2324 Route 50 in Tuckahoe, Block 310 Lot 15 is before the board asking for a use variance for a second dwelling unit in the TV zone where only single-family homes are permitted. He has described the structure as being in its current state for 25 years. Mr. Gutierrez and Ray Leps gave testimony about the history of the property. He is satisfied there is an accurate record how long the property has existed in its current form. The apartment is only used for family members that are visiting during the summer. He has agreed to a deed restriction so the apartment can't be used as a rental property at any time. Vince Orlando stated special reasons exist for granting the variance. He finds there is no detriment to the public good. Two neighbors have testified they are in favor of the application. Mr. Gutierrez has agreed to put up a fence along the rear property line for one of the neighbors for safety reasons. He believes the negative and positive criteria have been met. There is no detriment to the public good. The building coverage requirement in this zone is 50% and there is presently 14%. The septic has been inspected and is sufficient for the proposed use.

MR. PHIFER – The applicant testified the apartment has never been rented. The applicant will deed restrict the property so it can only be used by family members or guests and cannot be rented. Mr. Orlando testified the garage is 727 SF and meets the setback requirements and that the negative criteria has been met. Mr. Orlando testified that special reason “a” applies and there is no detriment to the zoning plan or the neighborhood. A 6' high vinyl fence will be installed along the rear property line. The pre-existing non-conforming distance between structures is not exasperated.

MR. TRULLI – The applicant will add a fence and remove the range from inside the apartment.

MR. MASHURA – He concurs.

MS. PETROZZA – She concurs. There has not been any negative testimony to imply the apartment is a detriment to the community.

MR. HEALY – He concurs.

MS. MITCHELL – She concurs.

MR. CASACCIO – He concurs.

A motion was made by Mr. Unsworth and seconded by Ms. Petrozza to grant the use variance and pre-existing non-conforming conditions with the standard conditions and that a deed restriction will be placed on the property to limit the use of the structure to family, a 6' high vinyl fence will be installed along the rear property line and the stove will be removed within 30 days from today. In favor: Healy, Mashura, Mitchell, Petrozza, Phifer, Trulli, Unsworth, Casaccio.

2. A & S PARTNERSHIP (ANDREW AND SALLEE RAFFA) – BLOCK 822  
LOT 1 – BA 23-19

Applicants are requesting a use variance to allow the construction of a duplex at 901 Commonwealth Avenue in Strathmere.

Kristopher Facenda, Esquire, represented the applicant. Carol Tutelian Professional Planner, Robert Bruce, Professional Engineer and Carmen Larosa, Registered Architect and Planner, were sworn. Sallee Raffa, 901 Commonwealth Avenue, was also sworn.

Mr. Facenda stated the property is in the RC zoning district and is currently home to Mildred's Restaurant. A use variance is needed to replace the restaurant with a residential duplex. No residential use is permitted in this zone. The township is considering allowing residential in this zone.

Sallee Raffa testified she has lived in the township 25 years. The existing Mildred's restaurant opened in 1952 and has operated 67 years. The restaurant is open April through October. There are between 30 and 35 employees. They serve dinner only. The hours of operation are 4 p.m. until 10 p.m. seven days per week. She and her husband have decided to retire and close the restaurant. They are proposing to build a duplex in place of the restaurant. They will utilize one side and her kids will use the other side.

Carol Tutelian testified the resort commercial zone extends 100' to the south of this site. There is a restaurant on the first floor and an apartment on the second floor. There are 175 seats. The plan contains a comparison of the Resort Commercial zone to the Resort Residential zone. The lot exceeds the lot area and lot frontage requirements. The front yard setback will be increased. The building coverage will be reduced from 53.7% to 26.9% where 27% is allowed. Impervious coverage will be reduced from 57.5% to 45%. The intensity of the property will be greatly reduced in terms of traffic, sewage flow and coverage. Purposes of the municipal land use law that will be advanced include c, g and i. They propose to construct a side by side duplex. The proposed structure is smaller than the restaurant. This property is an appropriate location for a duplex. There is no substantial detriment to the zoning plan since the township is considering residential use and they comply with the setbacks. There are 4 parking spaces provided, 2 for each unit.

Carmen J. Larosa testified in regard to the six-page plan he prepared, dated 10-8-19 and revised 12-27-19. Page 1 contains a plot plan showing the proposed structure and the proposed setbacks off Commonwealth Avenue and Prescott Avenue. One duplex will have access on Commonwealth and the other on Prescott Avenue. They have increased the green area and reduced the impervious coverage. The building complies to both the RR and RC bulk standards. The structure is two story with garage/storage area on the ground floor. The structure meets the height requirements. The septic system encroaches into the front yard. Each unit has 3 bedrooms on the first floor and living space above. He agrees with Mrs. Tutelian that special reasons c, g and I apply. He agrees the positive criteria are advanced and the negative criteria is satisfied.

Mr. Dietrich testified that a much larger structure could be built on this property. A variance is not needed for the septic since the wall does not exceed 4'. Mr. Larosa agreed to put the garage at elevation 7. He also agreed to a French drain for the gutter downspouts. The HVAC platforms will be on the south side of the building.

Mr. Bruce explained the AE9 criteria is used for the septic. He is not sure what the height of the septic wall will be at this time. It was determined the application would include a variance to allow a 6' high septic wall/fence in the event it is needed.

The meeting was open to the public.

Lisa Gifford, 905 Commonwealth Avenue, Strathmere, was sworn. She supports the application.

The meeting was closed to the public and returned to the board for finding of fact.

MR. UNSWORTH – A & S Partnership is the owner of 901 S. Commonwealth Avenue, Block 822 Lot 1. This is currently the site of Mildred's Restaurant. The lot area is 100' x 100'. The restaurant is on the first floor and an apartment is on the second floor. This is an intense use with heavy traffic during the summer. The existing structure is substantially non-conforming. The applicant is proposing to replace the restaurant with a residential duplex. The new building would meet the bulk requirements for both the RR and RC zoning districts. The township is considering changes to zoning that would allow single family dwellings in the RC zone. The proposed structure would reduce the building and impervious coverages. The structure would meet the flood requirements. The non-conforming setbacks would be made conforming. Mr. Bruce is confident he will be able to meet all the DEP requirements. The applicant has agreed to raise the garage floor to elevation 7, french drains on the downspouts, and no habitable space below BFE. Special reasons for granting the variance have been satisfied. The positive and negative criteria have been met. He finds a duplex is a much less intense use than the restaurant. The architectural design is consistent with the area. The new structure will be a visual improvement to the neighborhood. One resident spoke in favor.

MR. PHIFER – The property is in the RC zone. The restaurant has been at this location since 1952. A use variance is needed to allow a duplex and a residential use. The applicants have lived in the township for many years. The restaurant employees 30 to 35 people and its open from 4 p.m. until 10 p.m. seven days a week. They average between 300 to 400 customers per night. Carol Tutelian testified there are 10 residential units in the RC zone, and some are duplexes. He finds that special reasons c, g, I and m are applicable.

MR. TRULLI – He feels the testimony given is creditable.

MR. MASHURA – He concurs.

MS. PETROZZA – She concurs. She agrees that special reasons c, g, I and m, can be used to grant the variance. There is no detriment to the public good.

MR. HEALY – He finds the application can be granted without any detriment to the public good.

MS. MITCHELL – She concurs. She is confident in the testimony given by Mr. Bruce.

MR CASACCIO – He concurs with the testimony that has been given.

A motion was made by Mr. Phifer and seconded by Mr. Trulli, to grant the application with the condition the septic does not exceed 6' above existing grade, the french system will be installed, the garage will be raised to elevation 7 and a restrictive deed will be filed. In favor: Healy, Mashura, Petrozza, Phifer, Trulli, Unsworth, Casaccio.

There was a 5 minutes recess. After the recess Mr. Facenda announced the following application will be tabled until March 12, 2020 at 7:30 p.m. He agreed to waive the tolling of time. No further notice will be given.

PAUL KISAREWICH – BLOCK 348 LOT 85 – BA 01-2020

**APPLICATIONS CONTINUED**

3. A & S PARTNERSHIP (ANDREW AND SALLEE RAFFA – BLOCK 823 LOT 1 – BA 24-19)

Applicants are requesting a use variance to construct a single-family dwelling in the Resort Commercial zone at 805 S. Commonwealth Avenue in Strathmere.

Kristopher Facenda, Esquire, represented the applicants. He stated this is a vacant lot across the street from Mildred's Restaurant and used as their parking lot.

Mrs. Tutelian testified the property is located on the corner of Commonwealth and Prescott Avenue. The lot is in the RC zone. It is a vacant lot presently used for parking. The applicants are proposing to build a single-family dwelling in the RC zone which is not presently permitted. The zoning schedule on the plan prepared by Carmen Larosa, dated 12-27-19 and revised 1-14-2020 shows the requirements in the RC and RR zone. The lot exceeds the requirements for lot area, lot frontage and lot width. There are two front yards. All setbacks conform to the ordinance. There are four parking spaces provided. She believes the dwelling is consistent with the neighborhood. She testified that 62% of the lots in the RC zone along Commonwealth Avenue are presently residential uses. The purposes of zoning that would be advanced include (g) since this is a vacant lot and its not environmentally sensitive and has been designed using the DEP and health department rules. This is an appropriate location for the dwelling. It is consistent with the neighborhood and meets the requirements of the RC and RR zones; (i) since the building and impervious coverage are less than what is permitted. The negative criteria are satisfied since this is not an intense use and will not cause a detriment to the public good. There is no negative impact to the neighborhood since the house would be consistent with the development around it and the township committee is considering a zoning change that would allow residential in the RC zone. It is her opinion the application meets the criteria for not causing a substantial impairment to the intent and purpose of the zoning plan since they meet all the bulk requirements for both zones. She sees no detriment since the dwelling would be consistent with the development along Commonwealth Avenue. There is no detriment to the surrounding area since the setbacks are substantial.

Mr. Larosa, previously sworn, testified the new structure would front on Prescott Avenue. The variance will be amended to request a 24' wide curb cut. The larger curb cut is needed because of the double garage. Street parking will still be available. Mr. Dietrich requested that Mr. Larosa would coordinate the location of the driveway with him. Mr. Larosa agreed to elevate the garage floor like the prior application. The flood elevation on the plan is mislabeled and will be adjusted. He also agreed to the drainage trench.

Mr. Dietrich feels that adding language in the approval that the height for the septic wall would be what is required by the DEP and construction official.

The meeting was open to the public.

Lisa Gifford, 905 Commonwealth Avenue, was sworn. She is in favor of the application.

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

MR. UNSWORTH – A & S Partnership is the owner of the property known as Block 823 Lot 1. The lot is 100' x 100' and is currently the parking lot for Mildred's Restaurant. The property is in the RC zone where single-family dwellings are not permitted. The proposed dwelling meets the bulk requirements for the RC and RR zones. A future zoning change is being considered to allow residential in the RC zone. If the zoning change were in effect the applicant would not need a use variance. There is a question in regard to the height of the septic system. Relief is requested for the height of the septic wall. It was decided the wall would be whatever the DEP and the construction official deemed appropriate. Conditions of approval would include the filing of a restrictive deed prohibiting habitable space on the ground floor, the garage floor will be raised to an elevation 7, drainage for the downspouts will be provided. A variance is requested to allow a 24' wide curb cut where 12' is permitted. Four parking spaces are being provided where two are required. Mr. Larosa will consult with Mr. Dietrich about location of the curb cut to provide maximum street parking. He agrees with the special reasons cited by Mrs. Tutelian. He agrees with the positive and negative criteria that has been stated. One member of the public spoke in favor of the application.

MR. PHIFER – Nothing to add.

MR. TRULLI – Nothing to add.

MR. MASHURA – Nothing to add.

MS. PETROZZA – She agrees that special reasons g and I are applicable.

MR. HEALY – He concurs with Mr. Unsworth.

MS. MITHCELL – She concurs.

MR. CASACCIO – He concurs.

A motion was made by Mr. Phifer and seconded by Ms. Petrozza to grant the application with the conditions the garage elevation will be 7 or higher, Mr. Carmen will work out the curb cut location with Mr. Dietrich, a restrictive deed will be filed, the septic system height will be determined by the NJDEP and the Construction Official. In favor: Healy, Mashura, Petrozza, Phifer, Trulli, Unsworth, Casaccio.

4. HUMANE SOCIETY OF OCEAN CITY, INC – BLOCK 650 LOT 11.02 – BA 15-19

Application is for preliminary and final site plan approval and a use variance for a use not permitted in a zone, to construct a 3,895 SF building to be used for boarding, adoption center, training center and evacuation center and variances for front yard setback, sign location, number of parking spaces provided and for not providing residential housing at 124 Stagecoach Road in Marmora.

Mr. Casaccio stepped down during discussion and voting on this application. Mr. Unsworth acted as Chair.

Kristopher Facenda, Esquire, represented the applicant. He stated the applicant is the contract purchaser of the property. This is a vacant 2.056 acre property in the MTCD. This is a wooded lot. This would be a secondary facility for the humane society. The proposed use is not permitted anywhere in the township making it unique.

William Hollingsworth, 308 Pennsylvania Avenue, Somers Point and Robert Bachich, Registered Architect, were sworn. Vincent Orlando was previously sworn.

Mr. Hollingsworth, Executive Director of the Humane Society for 14 years testified that after Hurricane Sandy they realized that an alternative plan was needed to keep their operation going. The main focus of their operation is emergency management. They help Ocean City with relocating animals after a fire, etc. During Sandy they assisted in removing several animals from the island. The proposed building would be used to relocate their animals in a time of disaster. The site would also be used as a training facility. He is a state certified instructor and trains students on how to handle animals in disasters. This would be the first facility in the area that trains how to handle animals in a disaster. They propose boarding at this facility to bring in income to help pay the utility bills and other expenses. There would be a limited number of kennels. The Humane Society is a 501C3 entity. Their mission statement is to provide the highest level of care and service to their animal friends.

Mr. Hollingsworth testified that OC Humane Society is open daily to the public. They do 24-hour animal control services for the City of Ocean City. They have a veterinary center that provides medical care on site. This center is open to the public, but the main purpose of the hospital is to assist the animals in their intake facility. They do about 200 adoptions per year. Every animal that comes in is behavioral tested. If an adoption does not work out they take the animal back. He testified they want to be a good neighbor to the people that live in the area. They have reached out to the church to let them know they will not have dogs in the play yard during church services and activities. They will limit the time the dogs are out, so they don't disturb the residents on Red Clover. They will not open until 8:30 a.m. They have done massive research on different sound barriers. He has traveled to other states to visit facilities to see their sound techniques. The facility would be open to the public from 11 a.m. until 6 p.m. for them to spend time



with the animals. They propose an indoor play yard and a small outdoor play yard. There are 16 kennels proposed.

Mr. Hollingsworth testified they provide programs for school children and adults. People from the community can come in to learn what to do with their dogs. They educate the public on wildlife.

During Hurricane Sandy they had to relocate their animals off the island. The dogs went into foster care. They used bread trucks to move their animals. It took two weeks after Sandy to be operational again. This facility would help them assist residents in Upper Township and Ocean City. The facility would have AC and heat. He discussed the roof and fencing that would help reduce noise. This is not an adoption facility. It would only be used as an adoption facility if the structure in OC were destroyed. The OC facility would remain, and the new facility would be used for boarding, emergency management, training and disaster relief. They have no intention of moving the veterinary facility from OC. They anticipate 3 employees, a cleaner, bookkeeper and dog trainer. This is one of the highest pieces of ground available in UT. He feels eventually they will lose the facility in OC and will have to use this facility because of flooding. If that were to happen there would be about 15 employees. The hours of operation would be consistent with their existing facility. This facility could house up to 16 dogs and 60 cats.

Mr. Dietrich stated the site is not designed to handle what exists in OC since there is only parking for 8 vehicles. The site meets the requirements of a small boarding facility and emergency evacuation of animals.

Mr. Orlando testified if there was an emergency the services they offer would be reduced.

Robert Bachich prepared the architectural plan and floor plan dated 9/27/19. He testified the dog runs would face Fred's Auto and not the residences. The building was designed not to look like a commercial building. An attic is proposed for record storage. He feels this is a good fit for the property.

No further testimony was taken. The meeting will be continued on March 12, 2020 at 7:30 p.m.

Solicitor Barnes asked the applicant to delineate the maximum level of activity at this facility before the next meeting and supply any additional information in regard to the noise at least 10 days before the meeting.

### **INVOICES**

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

### **RESOLUTIONS**

1. CHRISTOPHER AND DELORES JACKSON – BLOCK 734 LOT 1 – BA 21-19

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

2. SPECIAL RESOLUTION 02-2020 – END OF YEAR REPORT

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

3. MOKEV LLC – BLOCK 758 LOT 12 – BA 20-19

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

**ADJOURNMENT**

A motion to adjourn the meeting was made by Ms. Mitchell, seconded by Ms. Petrozza, and approved. The meeting was adjourned at 10:26 p.m.

Submitted by,

Shelley Lea