

# **UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT**

## **MEETING MINUTES**

### **MAY 13, 2021**

The Upper Township Zoning Board of Adjustment held its regular meeting on May 13, 2021. This was a virtual meeting that was called to order at 6:30 p.m.

#### **SUNSHINE ANNOUNCEMENT**

#### **SALUTE TO THE FLAG**

#### **ROLL CALL**

Present: James Burger, Sherrie Lisa Galderisi, Richard Mashura, Karen Mitchell, Mark Pancoast, Lynn Petrozza, Christopher Phifer, Andrew Shawl, Larry Vice Chairman Matthew Unsworth.

Absent: Lynn Petrozza, Paul Casaccio.

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

#### **APPLICATIONS**

#### **STRATHMERE MOTEL INC – BLOCK 834 LOT 1 – BA 09-2020**

Continuation of an application for preliminary and final site plan approval, a use variance for the expansion of a non-conforming use in the RC zone, a D6 variance for the height of the proposed structure and possible bulk variances to construct a 15-unit hotel at 513 Commonwealth Avenue in Strathmere.

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

Solicitor Barnes informed the board that the applicant has made an amendment to the application as it relates to the height of the building.

Mr. King stated they received the amended report by Tiffany A. Cuvillo, dated May 12, 2021. The report indicates that a D6 variance is needed for the height of the structure due to a 0.775' deviation. The plan will be revised to reduce the height by 0.775'

Tiffany Cuvillo, Professional Planner, was sworn. Ms. Cuvillo reviewed the report that she prepared to replace an existing 16-unit motel with a 15-unit hotel in the RC zone. The proposed hotel would be larger and encompass more of the property. Hotels are not permitted in this zone and the existing motel is nonconforming. She stated that bulk variances are typically subsumed within the use variance. She reviewed each of the bulk variances requested. The applicant proposes decks in the rear of the motel, however the setback for the decks are not shown on the plan. With the new revision to the height of

the structure the applicant now requires a C variance and not a D variance. She feels the applicant should be made to enhance the screening and landscaping along the property lines even though they will not be able to comply with the ordinance requirement.

Mrs. CuvIELlo reviewed the different types of D variances. She stated that the variance to exceed the number of signs and sign area would not be subsumed into the D variance. She discussed general welfare and how the board should not just look at the site but also the surrounding area. She also discussed how the board must look at the benefits provided by the applicant and balance them with the rest of the testimony that was given by everyone including the neighbors. She discussed purposes of zoning found in the Municipal Land Use Law under NJSA55:D-2. The board was given testimony that the proposed use advances special reasons a, b, g, I and m. She reviewed changes in the zoning of Strathmere found in the 2006 Master Plan and the Master Plan Reexamination Report from 2020. She does not feel that comparing Strathmere to the Town Centers districts is a fair analysis. She feels the board should look at the standards in the RC zone. She spoke about balancing the impacts and what is substantial. She also discussed reasonable conditions of approval such as being consistent with the testimony given that the hotel would remain transient in nature, the site would be subject to the affordable housing impact fee and all other agency approvals.

Mrs. CuvIELlo testified that the most recent master plan does not include hotels as permitted uses. Mr. Dietrich explained that hotels have not been included as a permitted use in Strathmere since before 1995. Mrs. CuvIELlo stated they are not sure if it was permitted and then taken out or never permitted. She referred to the purposes in the RC zoning district found in the ordinance.

Raymond Went, Esquire, was present representing Christopher and Jessica Kohles, owners of 17 E Sumner Avenue in Strathmere. He reviewed the Kohles exhibits 1 and 5. He referred to Section 20-5.6.d in regard to nonconforming uses. Solicitor Barnes stated there has been evidence of the motel existing for several years. He does not agree with Mr. Went that this section of the ordinance applies since the applicant is asking the board to approve the demolition of the existing motel and to rebuild a larger hotel with approvals from the board and not some type of disaster. Mr. Went reviewed the differences between what is existing and what the applicant is proposing. Using photos, he stated there is not much difference in the height compared to what was originally proposed. He referred to the proposed structure as a wall. He stated the structure is massive compared to the homes already there and it does not fit. He discussed light, air and open space and the problems with septic systems in Strathmere. There is the question as to whether this would stay a hotel if approved. He stated that other permitted uses would not be feasible because of the parking requirement. He does not agree with the justification that this is on a county road. He feels the flood impact will be increased. He discussed previous testimony by the Kohles' s professionals. He discussed the risk of condo conversion with full time residents. He discussed the testimony of the public and the newly adopted master plan. He feels the detriment to the public good is strong and that the applicant cannot fulfill the burden to approve the D variance. He discussed

natural vegetation and how it cannot be restored. He reviewed concerns about emergency vehicle access. He stated that over 100 people were on this meeting to object and not one person showed up to support the application. He asked the board to deny this application.

There was a 10-minute break.

Richard King, Esquire, representing the applicant, stated that Mr. Bruce will satisfy the recommendation by Mrs. CuvIELLO regarding landscaping. The applicant has accepted the condition of a transient use only. He stated that no one is building cottages anymore. The facts include that this is a 35' on an island of many 35' buildings in the only commercial zone available, on the main Thorofare on a site that is already a motel and smaller than the size of a house that could be built on the site. The hotel is less intense than a summertime restaurant and has compliant parking. They would be replacing a flood prone eyesore with a flood compliant, architecturally pleasing building. It is unfair to look at the oldest and smallest structures. The flood ordinance encourages development of higher, stronger, structures and it discourages homes or businesses sitting on the ground with outdated building codes. He shared photos of some of the recently constructed homes on the island. There is no evidence that Upper Township decided to declare, as a matter of policy, that hotels are not welcome in Strathmere or inherently bad for Strathmere or the township. He stated that the motel has existed for over 200 years. He stated that the proposed hotel can't be compared to the Spinnaker in Sea Isle City since that hotel is two nine story buildings with even larger rooms. The proposed structure is smaller than a single-family home that could be built on the property with the same roof height. He believes that testimony given that a hotel is a more intense use than a bar or restaurant is incorrect. He believes they have satisfied the criteria to approve the height variance and that the lot can accommodate the proposed use. He reviewed the testimony given by Mr. Landgraf and stated the hotel has existed since 1959. He hotel is located near the beach where a hotel should be located. He reviewed the special reasons indicated by Mr. Landgraf and stated that the new hotel would comply to current standards including the FEMA flood codes. He stated they have reduced the size and height of the structure. He reviewed the proposed setbacks and coverages. He stated that a D variance is no longer needed for the height of the structure. He disagrees with Mrs. CuvIELLO's comment regarding comparing the site to other zoning districts since they were asked to do this by the board. He reviewed a chart showing area and bulk requirements in other zones. He feels it is important to show standards in other zones.

The board gave their findings of fact.

MR. SHAWL – Strathmere Motel Inc. is before the board regarding property that they own at 513 Commonwealth Avenue in Strathmere, also known as Block 834 Lot 1. The applicant is seeking an expansion of a nonconforming use in the RC zone and associated bulk and height variances. The bulk and height variances would be subsumed in the use variance. Mr. King presented information about the preexisting nonconforming structure. The new structure would meet FEMA requirements. One sign is proposed for each of the three frontages. There has been testimony that the proposed structure, streetscape and

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT

MAY 13, 2021

PAGE 4 OF 8

landscaping will blend in with the neighborhood. A curved roof is proposed to echo the ocean. The septic system would be in the rear of the building. Fire suppression measures are incorporated in the building design as well as extensive fire proofing. The new building would be ADA compliant and the existing building is not. The number of units has been reduced by one. The applicant has modified the height of the structure to conform with the height of 35 feet from flood required in the ordinance. The lot is 16,000 sq ft. The lot is in the RC zone and hotels are not listed as a permitted use. The hotel predates the zoning ordinance. The lot is specifically well suited for other more intense uses on the site such as a restaurant. The motel is needed in Strathmere. The existing motel fronts on three streets and was built in 1959. The proposed hotel meets the parking requirements. There are other zoning districts in the township that allow hotels. A D2 variance is needed for the expansion of a nonconforming use. The applicant provided testimony that the height is like other buildings in Strathmere. A variance is needed for the number of signs and sign area. A variance is needed for the number of habitable floors. The applicant will use permeable pavers to mitigate the runoff. The planner for the applicant has testified the lot could not be subdivided to support two houses and that special reasons a, b, g i and m apply. He felt the proposed use would not be a detriment to the zoning plan and public welfare. Raymond Went, attorney representing Mr. and Mrs. Kohles, objectors of the application, presented exhibits and suggested the master plan doesn't permit motels because they are more appropriate somewhere else. They hired a professional engineer who testified that the septic system is not compatible with regulations. The Kohles feel the hotel does not fit in with the neighborhood and would block their views of the sunset. Their planner described the hotel as a solid wall. They presented exhibits showing cottages in the neighborhood and feel this is too large of a development. Concerns of public inside and outside of 200 feet included there would be less open space, more lighting, the hotel would be out of character of Strathmere, the height, garbage, problems with the septic system, increased traffic, environmental impacts, impervious coverage, water runoff and shadows. There were comparisons made with the Reeds Motel in Stone Harbor. Many of the residents like the quaint and small town feel of Strathmere. There were concerns about parking although the number of parking spaces meets the requirement in the ordinance. There was lengthy discussion regarding the negative impact and the deviations from the recently adopted master plan. The residents have general safety concerns. The mobile home park in Strathmere was used as a comparison, however most of the occupants there are the same every year and it's only seasonal. Many neighbors agreed the proposed hotel is not a good fit and is out of scale. The existing motel was not intrusive, but the proposed hotel is too much in terms of the size and number of units. The board retained a planner, Tiffany Cuiello, who prepared a report for the board. She recommends the board compare what could be built with what is proposed and the intent of the zoning ordinance. The existing motel has rooms varying in size from 200 sq ft to 650 sq ft. The rooms in the proposed hotel would be 606 sq ft. The roof is considered a flat roof even though it is curved. The applicants are requesting to add 15,655 sq ft of volume on multiple floors or 5,540.8 sq ft footprint on the 16,000 sq ft lot. A 35 ft tall residential home approximately 4,800 sq ft could be built on this lot which would be 15% less than what is being proposed. The report also commented on the 1995 master plan review

where the RC and RR zoning districts were created along with the town centers. Mr. Went gave his summary which included exhibits Kohles 1 and 5 and reiterated the quality of life issues that would be diminished by the proposed development. He stated there would be substantial detriment to the public good if granted. Mr. King gave his final summary and agreed to additional landscaping on the property. He also indicated that the applicant agreed the hotel would conform with the transient nature as shown in the ordinance. He shared pictures of homes in Strathmere that are large. He also indicated that the RC zoning district which is the only commercial district in Strathmere could accommodate the hotel since this is a large lot, adds to the character of the community and is on a county road. The architectural design provides an aesthetically pleasing street scape. The current structure does not meet the building codes, flood requirements or setback requirements. Mr. King also stated the height is measured by the exterior dimensions and not by the number of stories. He finds this is a pleasing architectural design and he likes the features that have been incorporated. He hears what the community is saying regarding the size of the proposed structure but finds the proposed building is not much larger than a single-family home that could be built instead. If approved, he agrees the conditions of approval contained in the report should be incorporated. The septic permit would be issued by the county or the NJDEP and not the township. He stated that the size of the building was decreased, and the height was reduced since the original application. A D2 variance would be needed for the expansion of a nonconforming use. He finds the planner for the applicant made a good case for the special reasons.

MRS. GALDERISI – She concurs with Mr. Shawl. She finds special reasons g and I apply. She has some concerns with the septic system, but this is determined by another governmental agency. The evidence they brought forward appears to be adequate. The function of the building is to remain a motel/hotel and the applicant is willing to add this as a condition of any approval. She is in favor of the application as presented.

MR. MASHURA – He finds the Strathmere Fire Chief was consulted and he sent a letter to the board regarding equipment. He agrees the site is particularly well suited and maybe more so than some permitted uses. What is proposed would alleviate concerns with safety, fire and disasters. He finds the design is attractive and promotes a desirable visual environment. He is in favor of the D variance for expansion of a nonconforming use. He is concerned about the bulk and size of proposed structure. He stated that if the structure conformed with the RC zoning standards regarding lot coverage and setbacks, he would feel more comfortable with it. He finds the impairments are substantial when it comes to light air and open space. He doesn't feel the benefits of granting the C variances outweigh any detriments.

MS. MITCHELL – She concurs with Mr. Mashura regarding the C variances since the applicant has not proven the burden. She does not agree with the findings made by Mr. Shawl or Mrs. Galderisi. She finds that granting the requested variances would have a detrimental effect to the public good and would substantially impair the intent and purpose of the newly adopted master plan and zoning ordinance. The applicant's professionals have not demonstrated the subject site would accommodate the problems that would be associated with the increased height and bulk of the proposed structure. The scale of the structure does not add to or maintain the character of Strathmere. No

testimony was given that the structure would promote light, air and open space but would block air, light, and views. It does not appear that the applicant has attempted to comply with the newly adopted master plan or zoning ordinances. The proposal is not in keeping with the neighborhood and the deviation seems to be unreasonable. She finds the parking requirement is inadequate for today's standards on barrier islands. The proposed structure is out of character and impairs the intent of the master plan and zoning ordinance. She is concerned about runoff, shadows, limiting sunlight, limiting night sky and breezes. She has concerns about the safety of the neighborhood due to noise, light pollution, and smells. The proposed hotel would have a major negative impact on the surrounding properties. She feels the scale of the project is too large for Strathmere. Granting the application would have a detrimental effect on the unique nature of this community and will impact the sensitive eco system. The proposed hotel does not promote a desirable visual environment and does not promote the general welfare and is not inherently beneficial. The proposed application is not particularly suited for the site or the community. She has not heard any special reasons that apply to the application. She is not in favor of the application.

MR. PHIFER – The planner has told the board to compare the proposed application to what could be on this site. He finds all these uses to be less intense than the hotel. A single-family home on this lot would not require 19 parking spaces or a massive septic system nor would it incur additional fallout parking that would affect the neighborhood. Most of the bar patrons go to bars in Ubers so he finds a bar would be less intense. A restaurant has a defined time when they are busy, and the restaurants in Strathmere are visited by people on foot and bicycles. He feels for the applicant in trying to figure out what is a good use on the site. He does not believe a hotel is less intense than a restaurant and he does not believe that a hotel fits on this site. He doesn't believe that a hotel use can be granted without substantial detriment to the public good, meaning all the public and not just those staying in the hotel. He finds that it will impair the intent and purpose of the zoning plan and zoning ordinance. Hotels are not permitted and there is a reason for that. He finds that special reasons a, b, g, g and m do not apply as stated by the applicant's professionals. He stated the proposed hotel will not provide safety or promote the general welfare in any way. An intensive use such as this could lead to a man-made disaster and would only be exasperated by the fact that this building was constructed on the lot. The applicant has not provided open space or sufficient space and has crammed as much as they could onto this lot so special reason g does not apply. He does not believe this is a good civic design and therefore special reason I does not apply. He is not in favor of the application.

MR – TRULLI - He finds the lower water table in Strathmere is a concern due to the septic system. He finds there are too many large homes existing now in Strathmere. He has an issue with the number of parking spaces required in the ordinance for a hotel. He has concerns about the density and if the applicant plans to condo the units in the future. There is very limited parking available in Strathmere. He cannot in good conscious vote YES for this application.

MR. UNSWORTH – The applicant did a wonderful job presenting their application. He finds this is an attractive structure. The public did a fine job with their comments also. He is not in favor of this application as presented. There is currently a preexisting

nonconforming use on the property which they are permitted to continue using. He believes the applicant has a right to improve the existing structure, repair it, raise it to meet the current codes, and they are entitled to a limited expansion of the structure per New Jersey land use. While the motel is an existing use it was excluded as a permitted use in the last two master plan reexaminations in 2006 and 2020. He agrees with the applicant and our planner that the application meets portions of the special reasons in NJS40:55D-2, however there are other special reasons they are negatively impacting that he finds more than offset the special reasons and positive criteria created. There were 107 residents that spoke on this application and every one of them was against this application. Out of the 107 residents between 45% and 65% were concerned with height, light and air, environmental issues and septic systems, safety and fire, the overall size of the structure, parking, noise, traffic, zoning and property values. Over 50 residents named all of those specifically. The applicant and our planner noted special reasons a, b, g, I and m as meeting those requirements. While these special reasons apply, they have a negative impact as well. He finds special reason a applies since this is an existing use on the site, however, it is not a permitted use after multiple master plan reexaminations. The flood safety would be improved, and the building would comply with the codes as described in special reason b, however there would be additional water runoff and drainage problems on neighboring properties. They do not meet special reason c and this is negatively impacted by the height and volume of the structure. He finds that special reason e is negatively impacted because of increased traffic, parking problems and waste disposal. Special reason g does not apply since they will be increasing the septic flow and losing septic capabilities while losing vegetation in the process. Special reason h does not apply since traffic, congestion and parking will be an issue. He agrees this is an attractive structure as shown in special reason I, however, the size and the c variances needed would have a negative impact. In theory special reason m could apply regarding more sufficient use of land, however the hotel would create more density, making the use on the property too intense. He finds that special reason o is a pro and a con since they would recover and recycle but the sheer volume that would be created is too intense. The special reasons do not warrant this application being approved. He concurs the most with the findings made by Mr. Phifer.

A motion was made by Mr. Shawl and seconded by Mr. Phifer to grant a D2 variance for the expansion of a nonconforming use together with the conditions that the property maintains a hotel use in accordance with the ordinance for transient guests, the applicant must comply with the affordable housing fee required, the landscape buffer must be enhanced and the applicant must comply with all other governmental agencies. In favor: Shawl, Galderisi, Mashura. Opposed: Mitchell, Phifer, Trulli, Unsworth.

Solicitor Barnes stated that the applicant would need 5 affirmative votes for this motion to carry. The use variance was denied. Mr. King asked that the board vote on the C variances since they are different standard for the purpose of a potential appeal.

A motion was made by Mrs. Galderisi and seconded by Mr Shawl, to grant the C2 variances requested for the roof height, three wall signs where one is permitted and the

proposed sign area. In favor: Shawl, Galderisi, Mashura. Opposed: Mitchell, Phifer, Trulli, Unsworth.

### **RESOLUTIONS**

1. MICHAEL AND LORI CAPITO – BLOCK 694 LOTS 1 & 2 – BA 04-21

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

2. BRIAN AND JOANN DAY – BLOCK 575 LOT 31 – BA 07-21

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

3. KEVIN SHERIDAN – BLOCK 756 LOT 3 – BA 06-21

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

### **VOUCHERS**

A motion to approve the vouchers was made by Ms. Mitchell and approved.

### **APPROVAL OF THE MAY 4, 2021 MEETING MINUTES**

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

### **ADJOURNMENT**

A motion to adjourn the meeting was made by Mrs. Galderisi, seconded by Mr. Shawl, and approved. The meeting was adjourned at 9:55 p.m.

Submitted by,

Shelley Lea