

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT MEETING MINUTES NOVEMBER 14, 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: Sherrie Lisa Galderisi, Joseph Healy, Karen Mitchell, Christopher Phifer, Andrew Shawl, Larry Trulli, Matthew Unsworth, Chairman Paul Casaccio.

Absent: Ted Klepac, Richard Mashura, Lynn Petrozza.

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

SWEAR IN PAUL DIETRICH AND SHELLEY LEA

APPROVAL OF THE SEPTEMBER 12, 2019 MEETING MINUTES

A motion to approve the minutes was made by Mr. Unsworth, seconded by Mr. Phifer, and approved.

APPROVAL OF THE OCTOBER 10, 2019 MEETING MINUTES

A motion to approve the minutes was made by Mr. Unsworth, seconded by Mr. Healy, and approved.

TABLED APPLICATIONS

The applications below will be heard on December 12, 2019 at 7:30 p.m. The applicants have agreed to waive the tolling of time. No further notice is required.

CHRISTOPHER GEIB – BLOCK 348 LOT 84.02

CARLOS JAVIER GUTIERREZ – BLOCK 310 LOT 15

OCEAN CITY HUMANE SOCIETY – BLOCK 650 LOT 11.02

NEW APPLICATIONS

2. JIG NJ LP – BLOCK 836 LOTS 1, 2 & 5.05 – BA 13-19

Applicants are requesting an amended variance for maximum building coverage for the construction of two duplexes, 27% permitted, 31.6% proposed, since the original building coverage did not include the open uncovered decks at 413 S. Bayview Drive in Strathmere.

Julius N. Korschak, Esquire, represented the applicants. He stated the property was previously occupied by 7 non-conforming cottages. An application to construct two duplexes was approved by the board in June 2016. One of the duplexes was built before the applicants discovered there was an error in the building coverage calculations. The memorializing resolution refers to the building coverage as de minimis.

John E. Halbruner, Professional Engineer and Registered Architect, was sworn. Mr. Halbruner testified that he prepared new plans dated 9-12-19 to show the correct building coverage. The rest of the plan is the same as approved in 2016. The preconstruction of the site consisted of 7 dilapidated buildings built between 1930 and 1950. The buildings did not comply with the base flood requirements or zoning ordinance. These buildings were demolished to construct two new duplexes. Substantial reconstruction of the site improvements has been done. He believes the new buildings will be an improvement to the neighborhood. The building coverage on the approved plan did not include open decks. The plan has been revised to include 320 SF of additional coverage. In 2016 the board approved 28.4% coverage. The applicant is now asking for a variance to allow 31.6%. He stated that this project conforms more to the zoning ordinance than the 7 previous buildings. The duplexes eliminate 3 of those non-conformities and 4 were made more conforming. He believes the benefits of granting the variances outweigh any detriment and that the board could grant the variance without impairing the intent and purpose of the zoning plan and zoning ordinance. He testified there is no detriment to the public good.

Mr. Dietrich testified the plan does not show that the constructed duplex is slightly smaller than approved due to the size of the septic system. He stated that as part of the master plan reexamination the planning board has submitted a recommendation to township committee to make changes to the ordinance. One change is that open decks are not included in building coverage.

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

MR. SHAWL – JIG NJ LLC are the owners of 413 S Bayview and 3 W Sumner Avenue also known as Block 836 Lots 1, 2 & 5.05. Variances were previously granted to construct two new duplexes on this lot. The building coverage at that time was 28.4% where 27% is permitted. The open decks on the second floor above the parking were not included in this building coverage. The applicants are requesting a variance to increase

the coverage to 31.6%. A special reason for granting the variance is securing the building from fire and flood. There was no public comment.

MR. PHIFER – The decks are raised and not at ground level. He finds the relief can be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan or zoning ordinance.

MR. TRULLI – He concurs with Mr. Phifer.

MR. UNSWORTH – He concurs.

MR. HEALY – He concurs.

MS. MITCHELL – Nothing to add.

MR. CASACCIO – He concurs.

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

1. MOKEV LLC – BLOCK 758 LOT 12 – BA 14-19

Application is for an appeal of the zoning officers interpretation that the proposed septic system wall shall conform with 20-5.3 Fences and that the height of the septic wall may not exceed 4 feet in the front yard; a request for an interpretation by the board that the fence ordinance is not applicable; and if needed a variance for relief from the 4 foot height limit for fences and walls in the front yard to allow a septic wall elevation of 9 feet plus a 3 foot high fence surrounding the top of the septic at 115 Tyler Avenue in Strathmere.

John Master, Esquire, represented the applicant. Kevin and Maureen Sheridan are the principal members of the LLC. He stated that permits were applied for and approvals obtained for this construction project.

Kevin Sheridan, 22 Strawbridge Ave, Westmont, New Jersey, Robert Bruce, Professional Engineer and James Chadwick, Professional Engineer and Registered Architect, were sworn.

Mr. Sheridan testified this is not his only property in Strathmere. His personal residence is located at 2808 S. Bayview Drive. He described the 3 photos submitted with the application.

Ms. Lea testified that the construction officer asked for approval from the zoning office for the septic wall due to the proposed height. She has interpreted that the wall is not in compliance with the fence ordinance that states no fence or wall can be higher than 4 foot in the front yard. The applicant does have a DEP permit for the septic. Although the DEP requires a wall this high a variance is needed since it exceeds the height limit in the ordinance.

Mr. Dietrich stated that part of the problem in Strathmere is that the DEP has increased septic heights dramatically. This is one of the lowest parts of town. The level of infiltration and the zone of disposal must be above the 100-year flood elevation which is making the mounded system higher so that it is not in the flood zone, therefore making the walls higher around the system. In other parts of Strathmere the wall may not be so high since the ground elevation is higher. During Sandy there were two septic walls that failed which is one reason the construction official is more stringent in getting a building permit to make sure it is constructed properly. The only way to get rid of the septic walls is to install sewers in Strathmere. He feels that special reasons exist for granting this variance, specifically "B" to secure from flood, public health and safety.

Mr. Chadwick questioned why a zoning permit is needed for a septic wall. He referred to other septic walls in Strathmere and a provision he remembers that was once in the ordinance for a local board of health that contained information about septic systems. He sees no detriment to the public good or the zone plan or zoning ordinance by allowing this wall in the front yard since this is a highly advanced system more advanced than 99% of the septic systems in the township. He feels this wall is compatible to the wall on the adjoining lot which is over 6 ft. His construction plan for the single-family dwelling on the lot is dated 3-20-19 and last revised 6-19-19. He feels this is an appropriate use of land.

Mr. Bruce testified that the septic was originally located in the back yard, but the DEP had them move it to the front yard because of the wetlands and raised the wall 18 inches. He feels it is important that the ordinance is revised to accommodate septic walls in Strathmere. He has been designing septic systems in Strathmere for 25 years. There is nowhere else on the property for the system to be located. He testified it is not possible to design a system on this lot that would comply with the township ordinance. He discussed how septic systems are designed.

Solicitor Barnes stated the planning board is dealing with the master plan reexam right now and they are making modifications to the ordinance. He will contact the planner to hopefully get this to the planning board in an expeditious fashion.

Mr. Masters withdrew the request for an appeal and interpretation and requested the board consider granting a variance.

Mr. Chadwick referred to the plans by Robert Bruce, last revised 10-2-17. This plan shows a concrete block retaining wall, however they will now install a vinyl wall the same size in the same location since it is more economical. The DEP and County had approved the septic design before he was contracted to design the home. He testified that the construction official asked for a fence around the septic system since it is so high.

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

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MR. UNSWORTH – MoKev LLC owner of 115 Taylor Avenue, is before the board requesting a variance for a septic in their front yard that has a retaining wall that exceeds the height of 4 feet. Part of the original application was an interpretation of the zoning officer's decision, but they have withdrawn this request. The applicant's professionals have testified about the history of the approval system and the changes that have occurred since hurricane Sandy. Septic walls are now higher than they were in the past and designed from BFE making this one of the highest septic walls in Strathmere. The proposed system is as small as possible. The lot is unique due to the elevation. This is the lowest section in Strathmere. The system was originally in the rear yard which allows a 6 ft. high wall, but DEP had them move it to the front yard away from the wetlands and high-water line. The building inspector has required a fence around the top of the system for safety purposes and he agrees this is a good idea. The zoning officer then made the determination that the wall is above the allowable 4 ft. Requests were made to have the planning board review the septic wall requirements in the future but currently there are no provisions for that in the zoning ordinance. He finds the application should be approved since there are no alternatives for sewer service to this lot. There was no public comment.

MR. SHAWL – He concurs with Mr. Unsworth. The original application was for appeal, interpretation and a variance based on hardship. The application was amended to only ask for the variance. The DEP has mandated the wall height and location as part of their approval. Mr. Dietrich has testified about how the wall height requirements have increased. Mr. Chadwick testified there will be no detriment to the zoning plan or public good because of the advanced design of the system and since septic systems are needed to build a house. He agrees with the special reasons cited.

MR. PHIFER – This is the smallest and most advanced system that could be built on the lot. He finds special reasons A and B apply.

MR. TRULLI – He concurs.

MR. HEALY – He concurs.

MS. MITCHELL – She concurs. She finds it a shame that money and time are being spent to come before this board.

MR. CASACCIO – He concurs.

A motion to approve the application including a fence that will comply with the ordinance above the mound system was made by Mr. Shawl and seconded by Ms. Mitchell. In favor: Healy, Mitchell, Phifer, Shawl, Trulli, Unsworth, Casaccio.

The board took a break at this time. Mrs. Galderisi joined the board at this time.

INVOICES

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

RESOLUTIONS

1. BAYVIEW DRIVE LLC – BLOCK 826 LOTS 1 & 1.01 – BA 11-19

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

APPLICATIONS CONTINUED

KOBE CORP – BLOCK 682 LOTS 1 & 2 – BA 16-19

Applicant is requesting a use variance for expansion of a non-conforming use and amended site plan approval for unloading material from a water vessel onto trucks using the existing pier and storage of construction materials and equipment at 1 Harbor Road in Beesleys Point.

Marc Friedman, Esquire, represented the applicant. The pier is located on the same property as the Tuckahoe Inn. The pier has been utilized by the owners of the property for many years for loading and unloading of construction materials and storage of equipment.

Joseph Maffei, Professional Engineer, Shawn McCann, Fortescue, New Jersey and Tyson Merryman, principal of Kobe Corp, Egg Harbor Township, New Jersey were sworn.

Mr. Maffei prepared the plan dated 10-08-19 and revised 10-24-19. The plan shows the existing pier and ramp, temporary tri-axle dump truck parking on the stone overflow parking area, loading area and 30 CY containers. The proposed truck route is shown on the plan. He testified that the pier was used as far back as 1955 when the parkway was created and since then by many other construction companies. The pier was used by Mr. McCann previously when he loaded 20,000 tons of stone and oyster block. This is a different type of operation due to the type of material. He submitted a Zoning Line Plan that he prepared dated 11-14-19 that was marked Exhibit A-1. The plan shows the R and TC zoning line. The distance between the loading/unloading area to the zone line is about 1,000 ft. and 1,200 ft. from the nearest house. There are two non-conforming homes within the TC zone.

Mr. Maffei testified this is an appropriate location for this use. Since the site is located on the water the material would be loaded onto a barge to reduce truck traffic. The material would be dried out by the time it gets to the site. He feels this is a more efficient use for loading and unloading. Using the barge would reduce the amount of truck traffic going through town. They anticipate about 7 trucks doing 35 to 40 trips per day. Mr. McCann, the Senior Project Manager of Charter Contracting has a contract for 25,000 yards of material. One truck can hold about 15 yards which would equate to 1,667 trucks. These are sealed trucks. The material is covered with a tarp and they will not be filled to the top to prevent spillage. The trucks would travel north on Route 9 and make a right onto Tuckahoe Road at Dunkin Doughnuts and onto Route 50 to get to Estell Manor. He testified the use does not appear to be a detriment to the public good. This is an activity

that has happened at this facility for quite some time. Activity from this site was happening about 8 or 9 months ago without any complaints. The proposed use would not have a negative impact on the zone plan or zoning ordinance since this is an expansion of a non-conforming use but not a new use variance.

Mr. Maffei testified the applicant proposes to 6 a.m. until 7 p.m. until May. The trucks would be on site at 6 a.m. ready to start loading material. He testified that it is a benefit to maintain our waterways. The dredging is occurring in Ocean City and not at this facility. This facility is strictly for the unloading of the material from OC. The dredging will be done before the beach opens in the summer.

Mr. McCann testified trucks are typically loaded within ten minutes. They plan to work around the daylight hours and may not start until 7 a.m. They plan to run 7 trucks, seven rounds per day, for 35 to 40 loads per day. Round trip is about one hour. With lunch and breaks most trucks will do about 6 loads per day. Their contract with Ocean City does not allow them to dredge past March 31st. Demobilization of the site occurs after that. This project is contractually ending in May. He does not know if Ocean City will dredge again next year. The proposed route allows them to get the material where they need to without trucks passing the schools making it a safer route. The trucks required for this project are equipped with sealed, gasketed tailgates to prevent water leakage. They must have a minimum of two mud locks to clamp down the tailgate. The drivers are required to physically clean the gasket to ensure it seals properly after dumping each load of material. These are requirements in the OC contract. They finished a contract in the spring where they were hauling the dredge material out of the CDF on 34th Street down Roosevelt Boulevard and through Upper Township to Tuckahoe Turf Farm. Because of a methodology with their dredging and by barging the material to the pier the material should be relatively drier. He explained the barges they own are above the water and not in the water. All the material is tested and certified by NJDEP as meeting residential clean fill standards. None of the material is hazardous or toxic. They must maintain 18" of freeboard in the truck and utilize a tarp. If an accident does occur, they have a street sweeper available as well as manpower to respond promptly. Their latest job in OC was 65,000 yards 3 times bigger than this job.

Mr. Friedman stated this has been a working pier for many years. It is the townships request that they seek this application and he agrees it is appropriate to have the use memorialized. If the application is not approved Mr. McCann will have to find an alternative.

Mr. McCann testified that if denied they would load under the 9th Street bridge in Ocean City and will run close to 150 trucks per day through UT to Estell Manor. The trucking would triple due to the longer haul route and shorter duration of trucking available to them. He feels it is less of an impact on truck traffic using the barge. He testified that his company has learned to work with the tides at this pier since they were there in the spring. The contract with Ocean City ends March 31 and the contract with the applicant ends in May. Their daily ending time is 5 p.m. They would like to work Monday thru

Friday and some Saturdays since they are up against a deadline. There are no night time operations. He explained that if a barge pulls up and there are no trucks there, they can load the material into surge containers until a truck is available. An excavator with a clam shell bucket is used for loading.

Mr. Dietrich stated there are eight 30-yard containers that are staged on the pier so the material can be unloaded in to a container if a truck is not available. They are using the grant area the Tuckahoe Inn has by right. This use will not negatively impact an already shallow boat ramp. He did a traffic count on Route 9 at Seaview Avenue in June. Based on the seven-day average count of 1,850 vehicles in a one-way direction with the 40 trucks it would be about 2.2% of the vehicle traffic.

Mr. McCann testified in the event of bad weather most of the trucks they use will be plowing snow and will not be able to haul so they will lose time. Weather will have an impact and their deadline doesn't change. If days are missed due to weather, they may have to increase the amount of trucks.

Mr. Friedman suggested rather than come in for an amended site plan application every year that there is a mechanism in place to directly send the information to the engineer for administrative review and then he can decide if board approval is needed.

Mr. Dietrich believes the proposed use is more intense than the previous uses at this pier. He stated the pier has been used by marine contractors as far back as the 1950's. He was not aware of the project in the spring and was surprised that he did not receive any complaints when told the amount of trucks that were used. He stated that Route 9 was resurfaced within the past 10 years and the State is looking to resurface it again within the next two years.

Mr. McCann testified they brought in 25,000 tons of stone and 10,000 oyster blocks last spring using about 1,100 truck trips. The number of trips were comparable, but the material was different.

Solicitor Barnes asked that the board and the applicant come to a resolution regarding hours of operation and when trucks can arrive at the site. There also must be a contact person to receive complaints if there are any and monitor the operation. Mr. McCann testified it is their intent to work during the sunlight hours. The earliest the trucks will arrive is dawn. The trucks are not getting loaded after dusk. There will not be any trucks left at the site overnight. Mr. Dietrich suggested utilizing the same start time as the UT Public Works which is 7 a.m. Ms. Lea feels it would make enforcement easier to set a designated start and end time rather than dusk to dawn.

Mr. Dietrich testified that marine contractors utilizing the pier to unload is customary at this location, however he felt the number and intensity of trucks warranted filing an application since there are no prior approvals.

Mr. Feinstein stated that he does not want the board to limit when the pier can be used. Although the owner does not want this type of use operating during the summer when the restaurant is busy, he does not want to make it impossible to do anything during the summer. Solicitor Barnes stated that the board granted a parking variance at this location. Since this area was designated as overflow parking it could not be used while the outside bars are open.

Chairman Casaccio announced the meeting would be open to the public within 200 feet, however no comments will be taken after 11 p.m.

Bill Millar, 6 Harbor Road, was sworn. He believes the board needs to address the entire operation and not just the truck traffic. There is equipment on site, barges that come and go, tugs that pull the barges. The prior operation ran day and night. The operation also took place in the middle of the night.

Mr. Dietrich informed the board that he would not be at the December meeting. The planning board meeting has been cancelled for next week and this application could be continued to next Thursday.

A motion to continue this meeting to November 21, 2019 was made by Mrs. Galderisi, seconded by Mr. Healy, and approved. In favor: Galderisi, Healy, Phifer, Shawl, Trulli, Unsworth, Casaccio.

Chairman Casaccio announced this application will be continued on November 21, 2019 at 7:30 p.m. There will be no further notice of this application.

CLOSED SESSION

A motion to go into Closed Session was made by Mr. Unsworth, seconded by Mrs. Galderisi, and approved. (10:54 p.m.)

The board went back on the record at 10:57 p.m.

ADJOURNMENT

The meeting was adjourned at 10:57 p.m.

Submitted by,

Shelley Lea
Board Secretary