

**UPPER TOWNSHIP PLANNING BOARD
MEETING MINUTES
OCTOBER 21, 2021**

The regular meeting of the Upper Township Planning Board was held at the Township Hall, 2100 Tuckahoe Road in Petersburg, New Jersey. The meeting was called to order at 7:45 p.m.

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Present: Georgette Costello, Ted Kingston, Janet McCrosson, Christopher McGuire, Gary Riordan, Robert Young, Joseph Harney.

Absent: Curtis Corson, John Klebaur, Craig Reeves, Richard Palombo

Also, in attendance were Jeffrey Barnes, Board Solicitor; Paul Dietrich, Board Engineer; Liz Oaks, Board Secretary.

APPROVAL OF THE SEPTEMBER 16, 2021 MEETING MINUTES

A motion was made by Ms. McCrosson and seconded by Ms. McGuire and approved.
Abstain: Kingston

APPLICATIONS

1. Deauville Inn – BLOCK 850 LOTS 1, 1.01, 3, 3.01, 4 & 5 – PB 06-2021

Applicant is requesting amended site plan and variance for parking, directional signs and valet parking at 201 West Willard Avenue, Strathmere, New Jersey.

This application is tabled until Tuesday November 23, 2021 special meeting at 6:30 p.m.

2. THREE’S COMPANY, LLC – BLOCK 565.03 LOT 55.04 – SD 04-2021

Applicant is requesting sketch plat classification of a proposed 15 lot Major Subdivision at 1718 Route 9 South, Seaville, New Jersey,

Mr. John Batastini explains the request for classification of a proposed 15 lot Major Subdivision. Mr. Joe Maffei, Engineer for the applicant was sworn. Mr. Maffei describes the proposed application is 15 lots and includes a roadway, therefore should be classed as a major subdivision.

Paul Dietrich, Township Engineer, was sworn.

Mr. Dietrich agrees the application satisfies the criteria to be classed as a major subdivision.

The meeting was open to the public. Hearing no response, the meeting returned to the board.

There were no additional comments from the board.

A motion was made by Ms. McCrosson and seconded by Mr. McGuire to find that the application should be classified as a major subdivision. In favor: Costello, Kingston, McCrosson, McGuire, Riordan, Young, Harney

3. THREE'S COMPANY, LLC – BLOCK 565.03 LOTS 55.04 SD 05-2021

Applicant is requesting preliminary subdivision approval for a 15 lot Major Subdivision at 1718 Route 9 South in Seaville, New Jersey

Mr. Maffei testifies that this is 15 lot subdivision was originally approved in 2004. It is the same layout as the original with minor changes. Updated stormwater management plan and lot 575.13 is now conforming. The property is 18 acres in the R zone. Fully conforming with no variances required.

Mr. Riordan asked about sidewalks and believes it would be a safety issue.

Mr. Dietrich explained that sidewalks are not required by the Township or State. This proposed subdivision does not meet any of the required criteria that would create a need for sidewalks.

There was a discussion about the sidewalks.

Mr. Harney questioned the wooded areas of the property being protected under tree preservation and endangered species; how this will enforcement be handled in the future. He is also concerned with the noise buffering and safety of neighboring mining pit. Proposing some type of fencing along the back of the property to provide a buffer.

Mr. Maffei confirmed that the property is approved under the current plan. Any future changes such as pools or accessory structures would be regulated through the zoning application.

Mr. Tom Ulmer, 3128 Asbury Avenue, Ocean City was sworn. He proposed to create a berm, greater than 4 feet with engineer approval. He agrees to add trees on the top of the berm. The choice of trees can be up to the township.

Mr. Maffei testified there will be city water. No septic design yet. They will apply with the county once lots are divided.

Mr. Ulmer agrees to put a pad for bus stop with a handicap ramp along the south side of New Road.

The meeting was opened to the public. Hearing no response, the meeting returned to the board.

MR. RIORDAN – Three's Company, LLC is requesting a plat classification of a proposed 15 lot subdivision located at 1718 Route 9 South in Seaville also known as block 565.03 lot 55.04. It does meet the criteria for a major subdivision. The applicant was represented by Mr. Jon Batastini, Esq. The applicant has agreed to construct a 4 foot or greater berm from tree line to tree line with the exception of a drainage area, evergreen trees will be planted on top. The applicant has also agreed to add a 10 foot by 10-foot pad for children to wait for the school bus that will include a handicap ramp. Expert testimony was provided by Mr. Joe Maffei, P.E., he stated that

the property is located in the R Zone, it is conforming to all township land use regulations with no need for variances. Testimony was also provided by Mr. Tom Ulmer. Testimony was provided by Paul Dietrich, Township Engineer. Mr. Dietrich has reviewed the plans and application and stated that the application meets the definition of township land use regulations. There was no comment from the public. The major subdivision plans were prepared by EDA originally dated August 12, 2021 and revised October 7, 2021. No further comment.

MS. COSTELLO – Mr. Maffei stated that this was originally approved in 2004. The only changes made were to stormwater management. There was a letter written by Mr. Dietrich, Township Engineer, on September 27, 2021 and changes were made by the applicant on October 7, 2021 to comply with the ordinance proposed tree preservation shown on the proposed lots of the entire project. Extended the drainage easement on lot 55.13 to the proposed street right of way. The street lighting will be LED fixtures and the street light closest to Route 9 is to be moved 20 feet closer to the intersection. The board had some concerns, there was extended discussion on sidewalks as a safety feature. The applicant doesn't feel the need. There are no intersections, it is a straight away and the road is 24 feet wide. Another concern was related to the threatened species and those concerns were discussed at length. Any changes to the wooded areas such as pools would have to go to the zoning board for approval. And the compromise for the sidewalks, the applicant has agreed to add a 10-foot concrete pad on the south side to fill in on the corner with a handicap ramp for children waiting for the school bus.

MR. KINGSTON – The applicant has agreed to put a berm across the back of the lot. It will be greater than 4 feet with trees planted on top. The applicant has turned down the request to put in a sidewalk the length of the street but did agree to the small concrete pad for a bus stop. He believes the township should remain consistent that sidewalks should be everywhere. He will be voting against this application.

MS. MCCROSSON – The property meets all of the criteria for a major subdivision. There will be no well, water will be provided by NJ American Water. Everything has been covered by everyone else.

MR. MCGUIRE – Notes that the original 2004 plans did have a sidewalk.

MR. YOUNG – He concurs

MR. HARNEY – The final plans prepared on October 7, 2021 by Mr. Maffei. A lot of the concerns were discussed if not addressed to the board's satisfaction. Not all but many concerns have been addressed. There have been some concessions. Safety is a priority with the board. The wooded feature of these properties makes them unique. They are going to be worthwhile having. He hopes there will not be a lot of damage in the future because there is an endangered species according to a report by Mr. Hender identifying a Barred Owl breeding area. Anyone that does intend to make such alterations to the property must come before the board. He agrees with the sidewalks and is aware that he can't make them an issue in this application because they follow the residential site improvement. They had to make major upgrades because of the stormwater management plans in compliance with the DEP. He thinks Mr. Ulmer had expressed interest in his original plans but now the street is wider. He understands that it is beneficial to have a wider street but doesn't believe that a 24-foot-wide street is all that wide when considering trash trucks and snowplows. He doesn't think the buses will come down the street and that the parents will all accumulate at the end of the street when dropping off and picking up children for the bus. He thinks the LED fixtures have been included in the plan if we can get Mr. Maffei to update the final plans with Mr. Dietrich.

MR. BARNES – The motion is to approve a preliminary 15-lot proposed subdivision. Contingent upon the applicant agrees to a 4-foot berm from tree line to tree line with trees on top. A 10 foot by 10-foot concrete pad.

A motion was made by Ms. McCrosson and seconded by Mr. McGuire to grant the application. In favor: Costello, McCrosson, McGuire, Riordan, Young, Harney. Opposed: Kingston

DISCUSSION

1. OCEAN CITY WINERY, LLC – BLOCK 723 LOT 37

County request for comments on the Ocean City Winery application to the County Agricultural Board.

Mr. Barnes explains that an application was filed for the old Tropp's Tree Farm wherein they want to put a winery/wine tasting facility pursuant to the Right to Farm Act. There are certain qualifications that one could have that would potentially allow them to by-pass going to the Township of Upper for approval. This is a pre-existing, non-conformity in that, although the farm has been there since the 70's, the zoning has changed and only permits single-family residents. Mr. Barnes and Mr. Dietrich attended a hearing in front of the Cape May County Agricultural Board. There are two issues first do they meet the requirement of having five acres. They clearly have that acreage; however, he and Mr. Dietrich did not believe they met the jurisdictional requirements of having five plus acres. They have been denied farmland assessment in 2009 and 2010 and never filed an appeal. They currently have an application pending that a conflict assessor is going to look to see if they comply. They also have other permits from multiple other acronyms that exist within the state of New Jersey. The second part is that if they meet that criteria can they have that board approve the wine tasting with approximately 80 seats, with 44 of those outside 36 inside. The hours of operation from 10am until 9pm, seven days a week. There are approximately 20 parking spots on gravel, limited lighting, and multiple issues with buffers. There were probably 20 neighbors that attended. Ultimately what happened the board determined that, from a jurisdictional standpoint, they met the five acres. Eventually the attorney for the applicant approached him to suggest they try to work together regarding site issues. Hopefully, they would be able to come to an agreement at which time the applicant would present that to the board.

What Mr. Barnes and Mr. Dietrich are requesting is that the board ratify the fact that they, the board, wanted them, Mr. Barnes and Mr. Dietrich, to advocate on behalf of the township and all the neighbors in the community. That what Ocean City Winery was proposing was suspect and needed to be more defined and is still not defined. The hope is that because their engineer is Mr. Orlando, there will be a good working rapport due to his frequent appearances before the boards. Hopefully we can make the best attempt to buffer this place with parking that is more delineated and more appropriate. Have some protocol and conditions in place that will not allow this to become a nightclub. The parking analysis was done as a restaurant however, we think it should be based on tavern regulations, which creates more parking spots. Bayaire Avenue will have more traffic when people miss the turn and naturally use the next street to turn around or even park.

Mr. Barnes states the resolution they are to consider would be stating that the board approves the actions taken by himself and Mr. Dietrich are acting in good faith and in the interest of the Board, the Township and the community as it relates to this specific application.

There was then a discussion between board members, Mr. Barnes and Mr. Dietrich. It is suggested by Mr. Barnes that we create a sub-committee composed of 2-3 board members, a person to represent the neighbors.

The meeting was open to the public.

George Steinbronn, 7 Lake Corson was sworn. He wants to encourage the township to act upon this with urgency. He has concerns about the walking paths and the parking.

John Griffin, 205 N Shore was sworn. He believes this was a planned and calculated move. This is a poor location. He hopes with a sub-committee they take multiple people, perhaps someone from each road in the 200-foot area.

Brian Edward, 17 Bayaire Road was sworn. He questions can we appeal the county decision based on the size of the farm. Mr. Dietrich explains that it cannot be appealed until it is memorialized. He is interested in a transcript of the meeting with the County Agricultural Board and was told by Mr. Dietrich to contact Barbara Ernst.

Karolann Kemenosh, 1 Bayaire Road was sworn. She believes the application was a complete run around. Noise is a big concern. When the elementary school makes an announcements, you can hear it crystal clear. The first festival or event at this farm, approximately 2 years ago, had music blaring. That night a gentleman had a heart attack. There is not sufficient buffering and the noise is a huge concern.

Tim Kelley, 4 Lake Corson was sworn. His biggest concern is safety. It is a dangerous area on Route 9. Noise is also an issue.

Joe Falls, 3 Bayaire Road was sworn. He expressed that many people have properties that are right behind their homes. He is right across the street. This is something they will all have to live with their whole lives.

The meeting was closed to the public.

Mr. Harney stated that if anyone were interested in joining the sub-committee to contact either Paul Dietrich or Liz Oaks.

RESOLUTIONS – Marshallville Farms, LLC

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

BILLS

A motion to approve the bills, as submitted, was made by Mr. Young, seconded by Ms. McCrosson, and approved.

ADJOURNMENT

Motion by Ms. McCrosson, and seconded by Mr. Young, to adjourn the meeting, with all Board members present voting in the affirmative. The meeting was adjourned at 10:02 p.m.

Submitted by,

Liz Oaks