

**UPPER TOWNSHIP PLANNING BOARD  
REGULAR MEETING MINUTES  
December 7, 2023**

The meeting of the Upper Township Planning Board was held at Township Hall at 2100 Tuckahoe Road, Petersburg. The meeting was called to order at 7:02 p.m.

**SUNSHINE ANNOUNCEMENT**

**SALUTE TO THE FLAG**

**ROLL CALL**

Member	Attendance
Matthew Davidson, Class IV	Present
Gary DeMarzo, Class II	Present
Brooke Handley Alt	Absent
Joseph Harney, Class IV	Present
Kimberly Hayes, Class III	Present
Ted Kingston, Class IV	Present

Member	Attendance
Chris McGuire, Chairman	Present
Colby Meloy Alt	Absent
Jay Newman, Class I	Present
Gary Riordan, Vice Chair	Present
Sean Whelan, Class IV	Present

Also, in attendance were Richard King, Substitute Board Solicitor, Zachary Jordan, Substitute Board Engineer and Liz Oaks, Board Secretary and Zoning Officer.

**APPROVAL OF THE November 16, 2023 MEETING MINUTES**

A motion to approve the minutes was made by Mayor Newman and seconded by Mr. Whelan.

In favor: Harney, Kingston, Newman, Whelan, McGuire

Abstain: Davidson, DeMarzo, Hayes, Riordan.

**NEW BUSINESS**

- FREEDOM PROPERTIES & HOLDINGS, LLC – BLOCK 575 LOTS 12, 13, 14, 15, 16, 17, 18, 19 & 20 – SD 07-2023

Applicant is seeking approval of a 2-lot minor sub-division with no variances at 1115 Route 9 South, Marmora, New Jersey.

John Amenhauser, Attorney for the applicant Freedom Properties, LLC explained the application as a 2-lot minor subdivision it is buy right with no variance relief. The property is in the center residential zone. The combined lot size is 96,040 square feet or 2.205 acres. Presently there is single-story single-family dwelling situated slightly off-center. They intend to keep this dwelling on proposed lot 12.01. Proposed lot 12.02 currently has a garage, concrete slab, and stone driveway; they intend to remove. Lot 12.01 will be 56,037 sf and lot 12.02 will be 40,003 sf both of which will be compliant in lot size. There were some comments by the engineer to be addressed. Lots 12, 13, 14, 15, 16, and part of 17 will become one lot and lots 18, 19, 20, and the other portion of 17 will become the other lot.

Comment #1 questioned the reason for the “jog” in the property line. Mr. Amenhauser explained this was a way to create two lots without creating the “flag lot” design that had been originally submitted and to avoid any variances.

Comment #2 addresses the garage/slab/driveway shown on the plan. Mr. Amenhauser confirmed they will be removed.

Comment #3 – questioned when the monument would be filed. It was confirmed that the monument would be installed prior to filing.

Comments #4 through #8 – Each of these addresses the way the land surveyor prepared the plans and confirmed they would comply with each of these.

Comment #9 – They will be filing by map, not deed once all compliance items are inserted and approved.

Mr. Amenhauser – They are aware they are subject to all government approvals.

Mr. Jordan has no additional concerns as the applicant has addressed each of them.

Mr. Riordan pointed out some inconsistencies between the name between documents.

Mayor Newman – Recommends a stipulation that driveways maintain a 20' width for the accessibility of emergency vehicles.

Mr. Amenhauser agrees to this as a condition.

The meeting was open to the public, hearing no one and seeing no one, this portion was closed and the meeting was returned to the board for findings of fact.

Mr. Riordan – The applicant, Freedom Properties & Holdings, LLC come before the board regarding the property at 1115 Route 9 South also known on the tax map as block 575 lots 12 through 20. The applicant is seeking a 2-lot minor subdivision with no variances. The applicant was represented by esquire, John Amenhauser. There was no comment from the public. Correspondence dated November 10, 2023 was presented from Zachary Jordan, P.E. of CME Associates that listed his review of this application. There was a plan of minor subdivision prepared by Cape Land Surveying, LLC dated September 5, 2022.

There were no additional comments from the board.

Mr. King frames the resolution to include the following conditions: 1. The driveway width of 20 feet and a canopy of 15 feet in height.

A motion to approve the application with the condition that the driveway maintain a minimum width of 20' and a canopy of 15' was made by Mr. Harney, seconded by Ms. Hayes.

In favor: Davidson, DeMarzo, Harney, Hayes, Kingston, Newman, Riordan, Whelan, McGuire

## 2. CYNTHIA SWENK AND WILLIAM MYERS – BLOCK 626 LOTS 1 & 5 – SD 08-2023

Applicant is seeking approval of a 2-lot minor sub-division with variance relief for front yard setbacks and distance between sheds at 825 Stagecoach Road, Marmora, New Jersey.

William Myers, 704 Main Street, was sworn.

Cynthia Swenk, 825 Stagecoach Road, was sworn.

Mr. Myers – We are here to seek a 2-lot minor subdivision. The plans originally submitted resulted in comments from the board engineer. They made the corrections on the plans that are before you tonight. There was a comment about the site triangle at Ocean Avenue and Stagecoach Road. They have submitted an application to Cape May County Planning Board. He called and spoke with them today and was told that they would most likely require a site triangle easement at that intersection. They would be forwarding information to the township shortly. In regard to where the asphalt driveway encroaches beyond the right of way onto their property, the county engineer didn't think there would be a problem. The following comments from the engineer to be addressed.

#1 - In accordance with Section 19-6.2(c) of the Ordinance, the following needs to be included in the plan: a. Computer Aide Drafting (CAD) computer drawing file in AutoCAD R14 or higher (\*.dwg) or standard "dxf" format file shall be submitted to the Township Engineer and shall meet the following requirements:

- i. Each lot shall be a closed polygon.
- ii. The drawing shall be referenced to N.J.S.P.C. 1983 (feet)

iii. The following items shall be placed on separate layers: Lot lines, street R.O.W., street centerline, easements, street names, lot number, block number, adjacent lot lines, lot line bearings, lot line distances, curve table information, wetland line, wetland line buffer, building setback line.

-The applicant agrees to provide CAD files.

#2 - Applicant should clarify the limits of the existing asphalt driveway on lot 1.02.

-The applicant agrees to remove the asphalt driveway from the new property line to Ocean Avenue.

#3 - Plans show an existing 6' high fence in the front yard setback and the township right-of-way. There is a callout stating that the fence is to be removed from the township right-of-way. Applicant should address the Board on removing and replacing the existing 6' fence in the front yard setback with a 4' fence according to township ordinances.

-The applicant agrees to remove the fence without replacing it. Mr. Jordan agreed a replacement is not required.

#4 - Survey Certification is required.

-The applicant agreed to this.

#5 - It appears that the County roadway encroaches the front of the property. Applicant should address the Board how the encroachment would be resolved.

-Applicant spoke with the county engineer, and they didn't believe this would be a problem. They did say that they would most likely request a site triangle easement. The applicant will comply with what the county requires. If anything changes that would require a variance the applicant is aware that they would need to come back to the board.

#6 - The street address for each new lot should be shown on the plan. The proposed address and lot numbers shall be approved in writing by the tax accessor.

-The tax accessor did assign both address and block and lot. The applicant agrees to show on plan.

#7 - Monuments are required where the ROW intersects with the proposed subdivision line. This is not provided at Stagecoach Road.

Mr. King suggested a condition stating this is consistent with the map filing law to resolve #7.

Section B of the engineer report addresses the variances being requested.

Mr. Jordan – They are requesting variances for the following:

- 1- A variance to permit an existing shed to encroach into the front yard where accessory buildings are to be in the side or rear yard.
- 2- A variance to permit the existing sheds to be 5' from each other where 15' separation is required.
- 3- A variance to permit the existing dwelling to encroach into the 50' front yard setback of Atlantic Avenue.

The meeting was open to the public. Hearing no one and seeing no one, this portion was closed, and the meeting was returned to the board for findings of fact.

Mr. Harney – The applicants William Myers and Cynthia Swenk are here seeking a 2-lot minor subdivision with variances for the property at 825 Stagecoach Road also known on the tax map as block 626 lots 1, 5-8, 12 and 15-17. There are multiple comments from the engineer that the applicant will meet. Pertaining to encroachments, easement, addresses on the plan. There were questions about monuments and ROW and the asphalt driveway. The applicant and engineer have discussed the subdivision lines. A variance to permit an existing shed to encroach into the front yard where accessory buildings are to be in the side or rear yard. A variance to permit the existing sheds to be 5' from each other where 15' separation is required. A variance to permit the existing dwelling to encroach into the 50' front yard setback of Atlantic Avenue.

Mr. King – To clarify, his understanding is the house from Atlantic is a hardship variance as the house is existing. The variance for the shed is due to having two front yards, this would fall under a hardship as well. And the basis for the variance for the distance of 5' between the sheds is that they are not a habitable space.

Mr. Whelan – Nothing to add.

Mr. Riordan – Per a phone call on December 7, 2023, by the applicant. The county planning board is requiring an easement for a site triangle at the intersection of Ocean Avenue and Stagecoach Road. The county planning board is to send correspondence to reflect this to the township engineer. No comment from the public. The subdivision plan was prepared by Fralinger Engineering dated September 29, 2023.

Mr. DeMarzo – Concurs with Mr. Riordan's comments about the letter and conversation with the county.

Mr. Kingston – The most significant findings of fact is the county encroachment on this property along Stagecoach. The worst portion is about 20'. It doesn't affect the application and isn't really a factor. He sees no detriment to the variance.

Ms. Hayes – Nothing to add.

Mayor Newman – Nothing to add.

Mr. Davidson – Nothing to add.

Mr. McGuire – Nothing to add.

Mr. King frames a motion. The motion is to approve a 2-lot minor subdivision with the associated variances 1 through 3 on the engineer's report which are the shed in the front yard, the sheds close together and the front yard setback on the principal structure subject to the conditions as outlined on page 3 of the engineer's report with number 2 having been modified to indicate the asphalt will be removed entirely from 1.02. Number 3, the fence will be removed and not replaced. Number 7, the monuments will be installed if actually required by the map filing law at Stagecoach Road where the new lot line is proposed.

A motion to approve the application as presented by Mr. King was made by Ms. Hayes, seconded by Mr. Riordan. In favor: Davidson, DeMarzo, Harney, Hayes, Kingston, Newman, Riordan, Whelan, McGuire.

## **DISCUSSION**

### **Adding Farms as a permitted use to the CM2 Zone**

Mr. DeMarzo explained that he discovered the state said no to the property owner back in 2016. Farms are not a permitted use. It is not consistent with the master plan. It was then submitted to the county and that went nowhere either. The zone is based on ratables, and growth and they said no. We now try to workshop this and see what we can do. One thing is to do it by a variance, but the state said no because a variance goes with the land. It could be addressed at the master plan review. Instead of adding a use to a zone, maybe we move the parcel out of the zone. This is essentially where it is. The property owner has made several moves over the years, whether it was motivated by preservation or monetary. It was originally approved by this board, but they did not have the full knowledge of the events. It was forwarded to the committee but was rejected and returned to the planning board for further review. At this point this board does not need to rescind the prior approval or make any decision unless they want to send the same recommendation back to the committee. The board discussed the possibility and decided not to make a recommendation to the committee.

## **Board Engineer Position**

There are 3 applicants, CME, Kates Schneider, and Remington Vernick. There will be interviews conducted by the sub-committee on January 10, 2024. The sub-committee hopes to have a recommendation at the next planning board meeting, January 18, 2024.

## **RESOLUTIONS**

### **2024 Meeting Dates**

A motion was made to approve the Meeting Dates was made by Ms. Hayes, seconded by Mr. Riordan.  
In favor: Davidson, DeMarzo, Harney, Hayes, Kingston, Newman, Riordan, Whelan, McGuire.

## **PUBLIC PORTION**

The meeting was open to the public.  
Hearing no one and seeing no one, this portion was closed.

## **BILLS**

A motion was made by Mr. Newman seconded by Mr. Whelan to pay the bills, with all Board members present voting in the affirmative.

## **ADJOURNMENT**

A motion was made by Mayor Newman and seconded by Ms. Hayes to adjourn the meeting, with all Board members present voting in the affirmative. The meeting was adjourned at 8:26 p.m.

Submitted by,

Liz Oaks