

**MINUTES OF PUBLIC HEARING  
PHIPPSBURG BOARD OF APPEALS  
October 24, 2024**

**MEMBERS PRESENT:** Roland Bisson, John Morse, Chris Mixon, Joan Chrane, and Kevin Crosman, Chair

**OTHERS PRESENT:**

Applicant: John Curran

Members of the Public: Patricia Curran, David Percy, Tracy Percy, Ed Desmond, Deb Desmond, and Marjorie Hawkes

Code Enforcement Officer: Leighton Rainey

Planning Board Members: Marie Varian, Mark Hawkes, Lori Follett, and John Totman, Jr.

Administrative Assistant: Rachael Newbert

1. **[4:58]** The meeting was called to order by Mr. Crosman at 4:30 pm at Town Hall. He announced that there was a quorum, with 4 regular members and one alternative member who was filling in for an absent regular member.

2. **[5:17] Consider Minutes of the 7/16/24 Election Meeting.**

Mr. Morse made a motion to accept the minutes of the 7/16/24 Election Meeting. Mr. Bisson seconded the motion, which passed unanimously.

3. **[5:45] Public Hearing for John Curran - appeal of an approved Planning Board Special Exception Permit (Planning Board Application #2024-29) for David and Tracy Percy of 6 Sea Street, Tax Map 14, Lot 22. Appeals Case #2024-01**

Mr. Crosman introduced the application and noted who was present in the audience. Mr. Crosman explained to Mr. Curran that the Burden of Proof was his responsibility and gave him the floor. Mr. Curran asked to have his wife speak for him. Ms. Curran explained that during the Planning Board meeting that discussed David and Tracy Percy's application, the Planning Board reviewed sections of the Land Use, Shoreland Zoning, and Floodplain Management Ordinances. She described the ordinance sections that were included as attachments in the Curran appeal application. She stated which specific sections were reviewed by the Planning Board for the Percy application and explained why she opposed the Planning Board's approval.

Ms. Curran stated that she believed the Land Use Ordinance should not have applied to the Percy application because their property is in the Shoreland Zone. She said it should have been reviewed only under the Shoreland Zoning Ordinance, as it is more restrictive. Ms. Curran said that the Percys also applied for a Special Exception under the Shoreland Zoning Ordinance, Section 15.E. Campgrounds, which does not apply to leaving an RV on site. Ms. Curran said that since the submission of the application, she had been in communication with Jeffrey Kalinich

with the DEP. She stated Mr. Kalinich told her that the Special Exceptions Permit is required to be in the ordinance and only pertains to setback requirements for single family residences in a resource protection district. Ms. Curran offered to provide that material to the Board. Ms. Chrane asked Mr. Crosman if new materials could be provided, and he said no, since the Board was not sitting de novo. Mr. Morse asked which zone the Percy property is in, and it was established that it is in the Village District of the Shoreland Zone.

Ms. Curran explained that the Floodplain Management Ordinance is the most restrictive out of the 3 ordinances reviewed by the Planning Board and that it does not allow a Special Exception permit. There was some discussion by the Board on whether the Planning Board exempted the Percys under Floodplain Management Ordinance or if they only gave permission under the Land Use and Shoreland Zoning Ordinances. Ms. Curran questioned if the Planning Board should have reviewed the application under the Floodplain Management Ordinance, and the Board explained that is not what the Percys had applied for. Mr. Crosman summarized that the Planning Board felt they had the authority to grant a Special Exemption permit from the Shoreland Zoning and Land Use Ordinance, but they were not asked to, and did not give one from the Floodplain Management Ordinance.

Mr. Crosman asked if the permit provided any risk of cognizable injury to Ms. Curran or her property. She explained that the reason she does not want the RVs left there is because the permit violates the Floodplain Management Ordinance. Mr. Bisson asked Ms. Curran to explain where the violation is in the Ordinance. She referenced Article VI.I.1 of the Floodplain Management Ordinance and email correspondence with Sue Baker of FEMA that were included as attachments in the appeal application. There was discussion between Board members about the definition of "site." Ms. Curran said that Sue Baker's email stated that the Percy's property is within the AE and VE Zones, and no portion of the parcel is outside of the flood zone.

Mr. Crosman called upon Mr. Rainey who explained to the Board that he had spoken to and agreed with Sue Baker from FEMA who has said that Special Exemptions can not be granted and that the whole lot is considered a site. He stated that the Planning Board included the Floodplain Management Ordinance in their Findings of Fact. The Board discussed elevations and flood maps with each other and Mr. Rainey.

Mr. Percy gave the Board a series of emails regarding construction on properties near his lot and questioned the differences between the lots and his own and why they had been issued permits. Mr. Crosman said the Board could not take new evidence.

Mr. Mixon clarified that the question before the Board is whether the Planning Board was within its rights to grant the Special Exception permit within the Shoreland Zone. Mr. Crosman said that the exception that was asked for was from the Shoreland Zoning Ordinance, and giving that permission does not override or mean that the Percys would not need to address the Floodplain Management Ordinance.

The Board and Ms. Curran discussed the sections that the Percys listed on their Planning Board application, and she said that some sections were not applicable to the request of a Special Exception. The Board established that the Floodplain Management Ordinance was written by FEMA and was adopted as a Town ordinance in May 2015 with no amendments. They discussed how the Floodplain Management Ordinance is more restrictive than the Shoreland Zoning Ordinance.

Mr. Percy said he planned to leave the RVs in the center of the lot, which is within the Shoreland Zone. Mr. Hawkes referenced the Floodplain Management Ordinance, Article 7. Conditional Use Review and said he believed that it is the same as a Special Exception Permit. Mr. Crosman explained that the Percys did not ask for that in their application.

Ms. Chrane asked Ms. Curran if the RVs affected her property. Ms. Curran said that was not the point, that it violates an ordinance. Mr. Curran said this is the 3<sup>rd</sup> or 4<sup>th</sup> year in a row that the Percys have applied to leave things on the site over the winter. He said the ordinances are there to protect the community and if there was a flood the RVs would become floating projectiles. He stated he feels very strongly that if there is a standard written, that it should be followed.

Ms. Varian explained that the Planning Board has some wiggle room if it is logical. She noted that the Percys said they would move the RVs if there was a flood. Ms. Varian said that it does not seem like the permit would hurt anybody or anything. She explained that the Planning Board did not take the Floodplain Management Ordinance into consideration as the application was made for a Special Exception Permit under the Shoreland Zoning Ordinance. Ms. Varian stated Mr. Rainey testified for the Floodplain Management Ordinance at the Planning Board meeting. Mr. Morse asked Mr. Rainey if the Percys came to him first, and he said no, that they went straight to the Planning Board. Mr. Rainey said the application violated the Floodplain Management Ordinance and this is why he brought it up to the Planning Board.

Mr. Mixon said the Currans raised some valid points. He stated that an argument could be made that a better way to approach the problem would be to seek a Conditional Use Permit from the Floodplain Management Ordinance with the Planning Board. Mr. Mixon addressed the question at hand and explained his opinion that the Planning Board did act within their authority to give the requested Special Exception Permit. Mr. Bisson said he believes the Planning Board thought they were doing the right thing by allowing the exception under the Shoreland Zoning and that the Percys will have to ask the Planning Board for a Conditional Use under the Floodplain Management Ordinance. Mr. Crosman asked if the RVs were on the property now and Mr. Percy said yes.

Mr. Crosman said that the Board would take the appeal under advisement and would have a written response within 30 days.

**4. [1:03:04] Other Business**

The Board scheduled a workshop for 6:30pm on November 6, 2024.

**5. [1:05:52] Announcements. None.**

**6. [1:06:00] Adjourn.**

Mr. Morse made a motion to adjourn. Mr. Mixon seconded the motion, which was passed unanimously. The meeting was adjourned at 5:31 pm.

Respectfully submitted,

A handwritten signature in black ink that reads "Rachael Newbert". The signature is written in a cursive, flowing style.

Rachael Newbert  
Administrative Assistant to the Board of Appeals