

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
JULY 12, 2007

The regular meeting of the Upper Township Zoning Board of Adjustment was held at the Township Hall, 2100 Tuckahoe Road, Petersburg, New Jersey at 7:30 p.m.

**CALL TO ORDER**

**SUNSHINE ANNOUNCEMENT**

**SALUTE TO THE FLAG**

**ROLL CALL**

Present: Elizabeth Bergus, Mary Jean Burgin, Ted Klepac, Jeffrey Pierson, Andrew Shawl, Christopher Phifer, Paul Casaccio.

Absent: Matthew Unsworth, Lynn Petrozza.

Also present were Dean Marcolongo, Board Solicitor; Paul Dietrich, Board Engineer; Shelley Lea, Board Secretary.

**SWEAR IN BOARD PROFESSIONALS**

**APPROVAL OF THE JUNE 14, 2007 MEETING MINUTES**

A motion to approve the minutes was made by Mrs. Bergus, seconded by Mrs. Burgin, and approved. Abstain: Burgin, Pierson, Shawl.

**TABLED APPLICATIONS**

The following applications are tabled until the August 9, 2007 meeting. The applicants have agreed to waive the time in which the board has to act on the applications. No further notice is required.

1. JCS REAL ESTATE DEVELOPMENT CORP. C/O JOSEPH CRADDOCK – BLOCK 306, LOT 19.01 – BA06-07
2. TERRY & CINDI HENES – BLOCK 838, LOT 9 – BA10-07
3. CATHERINE BARRON ELSEY – BLOCK 453, LOT 70.04 – BA13-07
4. JUSTIN & BARBARA GEORGETTI – BLOCK 567, LOT 23.03- BA14-07

5. HALL & DEBRA ZAHREND – BLOCK 453, LOT 247.08 – BA16-07
6. THOMAS TOWER / ACTION SUPPLY, INC. – BLOCK 549, LOT 110 – BA17-07

### **APPLICATIONS**

1. RALPH HOLT – BLOCK 652.01 , LOT 19 – BA01-07

Application is for a use variance to utilize the second floor for catering, variances for existing lot area and depth, revised site plan approval including the proposed catering business, six tables, revisions to the parking, drainage and buffering at Ralph's Bagels, 121 Tuckahoe Road, Marmora.

Julius N. Kenschak, Esquire, represented the applicant. He stated that this application has a history that involves a notice of violation and several municipal court summonses issued by the township as a result of alterations to his site plan. Mr. Holt removed trees from the property without site plan approval. In 1996 a use variance was granted to permit a commercial use on this property since the property is located in a residential zoning district. A copy of Resolution BA11-96 was marked as Exhibit A-2. After this the property was sold to Mr. Holt. In 2001 the board granted approval to operate a bagel and deli. A copy of Resolution BA23-01 was marked as Exhibit A-3.

Mr. Kenschak explained that the applicant is requesting to utilize a portion of the second floor as a catering facility. The second floor was previously approved as an office and storage space. There are no additions proposed to the building. He described the surrounding area.

Vincent Orlando, Licensed Professional Engineer and Planner and Certified Landscape Architect, was sworn in. He testified that the proposed buffering complies with the ordinance requirements.

Solicitor Marcolongo stated that Mr. Orlando would be testifying from his plans last revised January 30, 2007. A color rendering of the plans was marked as Exhibit A-4.

Mr. Orlando testified that Exhibit A-4 is a sheet 2 of 6 of the site plan with the landscape plan superimposed onto the exhibit. They are proposing to expand the parking area to add 18 parking spaces. A landscape buffer plan was prepared for the north and east boundary lines. They are proposing a new storm water retention facility. They intend to plant landscaping in and around the basin to make it look more natural. The area will be fenced. The trash dumpster has been relocated to the end of the parking facility.

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Mr. Orlando further testified that resolution BA23-01 indicates that parking was based on 600 sq. ft. of customer service area. The resolution allows for 3 tables with 4 seats at each table. A variance was granted at that time to allow 15 parking spaces where 21 spaces were required. The parking analysis for the catering facility is based on 900 sq. ft. and would require 18 additional parking spaces. The catering facility would be limited to 20 seats.

Mr. Orlando testified that the applicant is requesting to amend the site plan to allow 6 tables in the bagel shop. There is no additional parking needed for the 3 tables being proposed. He believes the parking will be more than adequate. He referred to a digital aerial photo from 2002 that was marked as Exhibit A-1. The exhibit shows the subject property and the surrounding area. There are other commercial businesses in the area including a shopping center that was just recently approved. He agrees that resolution BA11-96 that granted approval for a professional office use, is appropriate for the area since it was not very intense and provided a transitional zone. He also read sections of resolution BA23-01 that granted approval for the current bagel shop and deli use on site. He believes that this resolution remains valid today.

Mr. Orlando believes that the proposed second floor catering facility is ancillary to the primary use. In his opinion the proposed use will not cause any detriment to the public good or zone plan or zoning ordinance since the use is already there. He believes the additional 18 parking spaces outweigh any detriment. He stated that the catering facility peak hours are different than the bagel shop. He believes the special reasons stated in the prior resolutions exist today. He believes the application meets the purpose of zoning found in 40:55D-2 since it provides for a commercial use where he believes a commercial use should be located. The application meets paragraph "m" since the applicant is currently operating a facility at this location, he can utilize 900 sq. ft. with 20 seats and use it for a catering facility. He believes this particular purpose of zoning is advanced since it is a more efficient use of the land and will lessen the cost of development. He believes there is a need for a small facility of this nature for the general public. He believes this particular site is not suited for residential use. He believes there will be no substantial detriment to the public good, zoning plan or zoning ordinance.

Mr. Korschak stated that the original approval was for 3 tables. The applicant would like to make the 6 tables currently existing in the bagel shop legal.

Mr. Orlando stated that they propose to relocate the storm basin and increase the size to accommodate the existing and proposed parking. He stated that prior to the applicant clearing the trees and filling in the basin the basin was adequate. He feels the proposed basin will be adequate to handle the increased runoff from the increased parking. There will no longer be any flooding on site. He stated that the site plan does not show any outside tables, however he will amend the plan to show the tables outside. He believes the existing 15 parking spaces are sufficient for the bagel shop.

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Mr. Dietrich stated that the township historically has not regulated outside tables. He stated that the original plan indicated 600 sq. ft. of patron space. The current plan by Stephen Martinelli shows 710 sq. ft. of patron space. The 710 sq. ft. of patron space would require 24 parking spaces. He disagrees that the existing parking is satisfactory for the current operation. He stated that during the week during peak times there are vehicles parking on Tuckahoe Road even though it is posted for no parking. He feels there is a need for the parking to meet the ordinance requirements. He referred to an event held on the second floor approximately a month ago when the parking area was full and vehicles were parked in the road and in the post office parking lot. He feels that consideration should be taken in how to prevent parking on the adjacent lawns. He believes the board previously granted the parking variance based on the fact that a limit was placed on the number of tables. He believes there is a need for the additional parking spaces since he is amending the application to permit additional seating in the patron area.

Mr. Orlando stated that 710 sq. ft. is the area of the customer service area and requires 24 parking spaces. A total of 42 parking spaces are required for the entire facility not including the outside tables. The applicant is proposing 33 spaces. He believes there is ample parking given the peak demand for both uses. Mr. Dietrich stated that the area of the patron use has not changed. What has changed is the number of tables within the patron space. The second floor will have a small office, utility closet, 2 large storage areas and a small bathroom.

Mr. Dietrich stated that there was a 20 ft. landscape buffer on the site that was cleared. Mr. Orlando stated that they would be willing to add landscaping behind the building and adjacent to lot 20. He stated that back shields would be added to the lights so they do not spill into the roadway or adjacent properties.

Mr. Dietrich stated that the landscape plan generally meets the buffer standard in the ordinance. He suggests since the applicant removed a lot of large mature trees that he should be required to increase the size of the red maples shown on the plan. This would make the foliage up higher so that it screens out some of the lighting especially from across the street. He stated that the photo shows how the trees used to shield the houses behind the bagel shop. Mr. Orlando stated that they could position some additional red maples in such a manner to help shield the adjoining properties. He suggested 3 to 3 ½ caliber since 4" is hard to come by. At that time the plantings would be approximately 12 to 13 ft. high. Mr. Dietrich suggests increasing the size or number of trees being planted. Mr. Orlando thinks increasing the number of trees is more efficient to the neighborhood than increasing the size. Mr. Orlando agreed that the number and location would be at the satisfaction of the board engineer. Mr. Dietrich is undecided whether the proposed location is the best location for the trash enclosure since it is being moved further from the building and closer to the neighbor's bedroom window. Mr. Kenschak stated that they are willing to relocate the trash enclosure to satisfy the neighbors.

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Ralph Holt, 50 Jill Drive, Marmora, was sworn in. He testified that he owns and operates Ralph's Bagels. Between 8 a.m. and 9:30 a.m. is his morning peak time. His afternoon peak time is from 11:30 a.m. until 1 p.m. He agrees not to use the second floor during the peak hours. He does not plan on hiring any additional help. This is a family

oriented business. He is in favor of planting additional red maple trees. He stated that the original plan located the dumpster in front of the loading zone. It was then moved at the request of a neighbor. This location was always a problem for the trash truck since it was next to a parking space. He feels the proposed location is ideal since it is in the center and would not interfere with trash collection. The trash dumpster is currently located in the rear of the building. He feels this location is very inconvenient. He believes the dumpster is further away from the neighbors house than it was previously.

Mr. Holt further testified that he began working on the second floor after receiving his permits from the township. He stated that the shrubbery he planted after constructing the bagel shop died. He has city water and the water bill was too expensive for him to water the shrubs. The dead trees were removed. He stated that four years after removing the trees he received a letter from the township telling him to replant the additional buffer and that the trees and debris had to be removed from the site. He stated that he did not hear from the zoning officer or engineer after that. Since he had ten days to remove the debris he hired someone to clear the trees. On the day they were clearing the trees Mr. Dietrich stopped at the site and told him to stop cutting the trees. When he told the individuals that were clearing the lot to stop they informed him that they would charge him the same price if they stopped at that time or completed cutting the trees. The next day Mr. Dietrich came back and said that he would have to replant the buffer. After that he received 6 summonses in the mail. He further explained that he had the tree cutters fill in the water basin while they were there clearing the lot. He knew that it would create some flooding but not as much as it did. He feels that the neighbors are trying to mess with his livelihood since they do not come into the store any more and after receiving the summonses in the mail a complaint was made to the Cape May County Dept. of Health.

Mr. Holt testified that he and his wife took a boating safety course in Sea Isle. Approximately 20 of his customers had shown an interest in the boating course so he contacted the Coast Guard about holding a class at his facility. He rented tables and chairs and his customers came for the class. He did not charge or sell any bagels.

Mr. Holt testified that his hours of operation for the first floor are 6:30 a.m. until 4:30 p.m. He would like to use the upstairs to fill in when the downstairs dies down. Businesses in the township have inquired about having small parties at his facility. He doesn't foresee the upstairs being used after 9 p.m. There is outside access to the upstairs. He intends to serve bagel sandwiches buffet style. He stated that 80 percent of his business is phone orders and take out. There is no waiter service. They are not considering waiter service upstairs. He does not plan to use the upstairs on a daily basis. There will not be any alcohol. He is not proposing any storage trailers or storage sheds.

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Mr. Orlando agreed that an as built survey be done after the upstairs is completed to verify that only 900 sq. ft. was being dedicated to the catering facility.

Mr. Dietrich stated that prior to October 24, 2006 there were discussions concerning the relocation of the trash enclosure. There were discussions concerning the landscape buffering. The zoning officer sent a violation notice to Mr. Holt dated October 24, 2006. The letter asked that the buffer be reconstructed since it had died due to lack of irrigation. Mr. Holt cleared trees that extended beyond his existing parking lot and the drainage basin. The letter that Mr. Holt is relying on states that the trees and debris that you have left on your property near the fence must be removed from the site. This referred to the trees and tree debris that he left lying near the fence after he cut them down.

Mr. Dietrich further testified that in November 2006 a call was received saying that trees were being cut down. He went to the site and there were approximately 3 or 4 trees that had been cut down. He informed Mr. Holt to stop cutting the trees and they discussed the letter that was sent. He told him to just clean up the debris and not cut down live mature trees in the buffer. The next day another call was received. He returned to the site to find that just about every tree on the property had been cut down. He went in and talked to Mr. & Mrs. Holt. Mr. Holt did explain that it would cost the same to cut 3 or 4 trees as it would to clear the entire property. He and Mr. Holt discussed a time frame and what needed to be replanted. On his way to a seminar the following morning in the pouring rain he drove past the site at about 6 a.m. Sometime between when he left the site the day before and that morning Mr. Holt had his contractor fill in the drainage basin and grade the site. The entire parking lot was flooded. That morning he had the court officer write up the summonses. After receiving the summonses Mr. Holt retained Mr. Korschak and Mr. Orlando. Mr. Holt has planted a double row of trees on site and has done some regarding so that the property does not flood as bad. Additional planting needs to be done to meet the township standards.

Mr. Korschak stated that he does not differ with Mr. Dietrich's comments.

The meeting was open to the public.

Jeff Waldman, Esquire, was present representing Keith and Sally Jack and Wayne Jack. He began his questions with Mr. Orlando. Mr. Orlando testified that he did review the resolutions from 1996 and 2001. When asked if the buffer on the north and east sides of the property had basically been eliminated, Mr. Orlando stated that this is not true since it has been replanted. When asked if the site plan as proposed does not provide for an entire replanting of either of these areas he stated that the buffer plan he proposed on sheet 4 of 6 meets the requirements of the ordinance. He commented that he does not know what existed on site prior to then so he does not know how long it will take for the trees to be like they were before. An aerial photo was marked as P-1. Mr. Orlando stated that the photo does not show the boundaries but it shows the existing building and the parking. It appears there is vegetation on the right side of the property. He does not

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believe that the additional tables on the first floor and outside intensify the current use since the parking is based on the square footage. If the catering upstairs happens while the bagel shop is open this is an increase in the space of the use but not the intensity. There will be more people coming to the site but they will be accommodated by the 18 additional parking spaces. He agrees there will be an increase in hours. He believes that a bagel shop is the same as a catering business since they will only be serving bagel sandwiches. The people will stay at the catering facility for a longer amount of time than the bagel shop, probably an average of 1 hour to 1 ½ hours.

Mr. Waldman asked questions of Mr. Holt. Mr. Holt testified that the aerial photo fairly and accurately depicts the property before he had the trees cut down. He has not made any changes to his parking lot. When he constructed the building he was not sure how he would utilize the second floor. He has used the upstairs for storage and has never let anyone use it. Mr. Holt stated that he has 6 tables on the first floor and he has recently placed tables outside for decorative purposes. He agrees that he had no approvals for the outside tables or the additional tables inside the bagel shop. He did not request approval to fill in the drainage basin.

Chairman Casaccio stated that this application will be continued to the September 13, 2007 meeting at 7:30 p.m.

**RESOLUTIONS**

**KARL FISCHER – BLOCK 654, LOT 4 – BA08-07**

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

**ROBERT CHATTIN AND MICHELLE JACKSON – BLOCK 567, LOT 48 – BA11-07**

A motion to adopt the resolution was made by Mrs. Bergus, seconded by Mrs. Burgin, and approved.

**BILLS**

A motion to approve the bills for payment was made by Mrs. Bergus, seconded by Mr. Phifer, and approved.

**CLOSED SESSION**

A motion to go into closed session was made by Mr. Shawl, seconded by Mrs. Burgin, and approved.

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**ADJOURNMENT**

A motion was made by Mr. Klepac, seconded by Mr. Shawl, and approved.

Submitted by,

Shelley Lea