

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT

MEETING MINUTES

JUNE 12, 2008

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: Mary Jean Burgin, Ted Klepac, Christopher Phifer, Andrew Shawl, Lynn Petrozza, Kenneth Yakopcic, Chairman Paul Casaccio.

Absent: Jeffrey Pierson and Matthew Unsworth.

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

SWEAR IN BOARD PROFESSIONALS

APPROVAL OF THE MAY 8, 2008 MEETING MINUTES

A motion to approve the minutes was made by Mr. Phifer, seconded by Mrs. Burgin, and approved. Abstain: Petrozza.

TABLED APPLICATIONS

The following applications have been tabled until July 10, 2008. The applicants have agreed to waive the tolling of time in which the Board has to act on the application. There will be no further notice required.

1. ROBERT WHITE LAW AND PAMELA LAWS – BLOCK 857, LO 1 – BA10-08
2. WARREN NORTH – BLOCK 657, LOT 9 – BA13-08
3. JOSEPH McCANN BUILDERS – BLOCK 829, LOT 4.01

APPLICATIONS

1. FRANCES LITTLE – BLOCK 2, LOT 7.01 – BA07-08

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Application is for a use variance to allow the existing residence to remain on site until the new residence is constructed at 1520 Weatherby Road, Steelmantown.

James Robertson, Esquire, represented the applicant. He explained this is an irregular shaped lot consisting of 3.2 acres in the F25 zoning district. There is an existing single-family dwelling and several accessory structures on the site. The applicant proposes to reside in the existing dwelling while the new one is being built.

Rami Nassar, Professional Engineer, with Schaeffer Nassar Scheidegg, was sworn in. He testified that he prepared the Variance Plot Plan, dated 2/13/08 and revised 4/23/08. The property is located in the F25 zone, however the lot is only 3.2 acres where 25 acres are required. The lot area is considered Grand fathered and is pre-existing non-conforming. The new house will be located 208 ft. from the front property line and would meet the front yard setback requirement. The existing house is located in the front yard setback along with several accessory buildings. The accessory buildings will be removed from the site. The existing house will be demolished after the new house is finished.

Mr. Nassar testified that a new well and septic will be installed. Minimal trees will be taken down. The lot is an old field and there are not many trees. They do not comply with the new 25 ft. landscape buffer requirement. He feels the property will be better aesthetically since all the old structures will be removed and the new single-family dwelling will meet the setback requirements. He believes that removing the accessory structures will create additional light, air and open space. He believes the variances can be granted without detriment to the neighborhood since it will be the same use and there will be no additional traffic. He feels there will be no substantial detriment to the intent and purpose of the Master Plan. He believes the benefits of granting the variance would outweigh any detriments if there were any.

Mr. Nassar submitted an aerial photo show the existing house and how the lot is cleared. The photo was marked Exhibit A-1.

Mr. Dietrich testified that as long as no trees are removed within 15 to 20 ft. of the septic the application would meet the intent of the buffer requirement in the ordinance.

Frances Little, 1520 Weatherby Road, was sworn in. She testified that the existing trees would remain on the property. She is hoping to be moved into the new house within 30 days after it is complete. She cannot afford housing while the new house is being built. The accessory structures were there when she purchased the property.

House plans prepared by Daniel Scott Mascione, Architect, dated 3/5/08 were included in the submission. The plans show a 2,652 sq. ft. modular single-family dwelling with attached garage.

The meeting was open to the public. Hearing no response the meeting returned to the Board for findings of fact.

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MR. SHAWL – Frances Little, 1520 Weatherby Road, is the owner of Block 2, Lot 7.01. Rami Nassar prepared the variance plan. The applicant would like to keep the existing dwelling on site until after the new one is constructed. The existing dwelling would be demolished within 90 days after receiving a certificate of occupancy. The accessory structures will be removed. The trees along the property line will remain. Mr. Nassar gave testimony that granting the plan as proposed would not impair the intent and purpose of the zoning law and that the use variance can be granted without damaging the intent of the zoning law. There was no public comment.

MRS. BURGIN – The applicant has already obtained well and septic permits. The proposed structure would comply with the setbacks. There is flexibility in the zoning plan in regards to the buffer. Under NJS40:55D c there was testimony that there would be adequate light, air and open space. The existing house will be demolished after 90 days from obtaining a CO.

MS. PETROZZA – She sees no detriment to the public good by granting the variance.. Mrs. Little testified that she could move out of the old house and into the new house in about 30 days.

MR. KLEPAC – Ms. Little testified that it would be a hardship if she had to pay for a place to live during construction.

MR. CASACCIO – The application cleans up the previous non-conformities on the site. The previous use of the property was a farm.

A motion was made by Mrs. Burgin and seconded by Mr. Shawl, to grant a use variance and buffer variance with the standard conditions and that the trees along the property line remain, all outbuildings will be demolished and the old house will be demolished within 90 days from receiving the certificate of occupancy. In favor: Burgin, Klepac, Phifer, Shawl, Petrozza, Yakopic, Casaccio.

2. SCOTT BEUHLER – BLOCK 848, LOT 4 – BA08-08

Applicant is requesting a variance to allow a 6 ft. high fence in the front yard at 138 Willard Avenue, Strathmere.

Scott Beuhler, owner of 138 Willard Avenue, Strathmere, was sworn in. He testified that he is requesting a variance to allow the existing 6 ft. high fence to remain in the front yard. His property faces 2 parking lots, the Deauville Inn and Uncle Bill's Pancake House. He needs the fence as a barrier from the noise.

Mr. Beuhler submitted photos taken within the last 2 weeks showing the fence, the 2 parking lots and a photo of his residence from the road. The photos were marked as Exhibits A-1 through A-4. He testified that the noise from the neighboring commercial uses is loud. He purchased his 3-floor house in 1997. He is a year round resident of Strathmere.

The meeting was open to the public.

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Greg Bennett, 21 E. Winthrop Avenue, was sworn in. He is familiar with the property. The applicant maintains his property. He feels the fence is needed due to the traffic and noise.

Hearing no further comment the meeting returned to the Board for findings of fact.

MR. SHAWL - Scott Beuhler is the owner of 138 Willard Avenue, in Strathmere, also known as Block 848, Lot 4. There is an existing 3-story dwelling on the property. The 6 ft. high fence has been there for 10 years. He is before the Board to legalize the 6 ft. high fence in the front yard. The fence is needed to keep people off his property and to buffer the noise and traffic coming from the commercial uses. The fence does not adversely affect the neighborhood. There was public testimony that the fence is an asset to the property and is not a detriment to the community.

MRS. BURGIN – There was no public testimony within 200 ft. The fence is needed to buffer the noise and the traffic. The applicant can replace the fence with a new 6 ft. high fence.

MR YAKCOPCIC – The applicant agrees to get a permit the next time he installs a fence.

MR. CASACCIO – This is a unique lot since there are 2 front yards.

A motion wade by Ms. Petrozza and seconded by Mr. Shawl, to grant the variance for a 6 ft. high fence with the standard conditions. Burgin, Klepac, Phifer, Shawl, Petrozza, Yakopcic, Casaccio.

3. PETER DAVISH – BLOCK 653.02, LOTS 14 & 15 – BA09-08

Application is for a use variance for the expansion of a non-conforming use to permit the addition of a deck on an existing duplex and variances for front yard setback and building coverage to construct a detached garage at 10 Route US 9 North, Marmora.

Dorothy McCrosson, Esquire, was present on behalf of the applicant. She stated that the applicant purchased the existing duplex in January 2008. The applicant is proposing renovations to the building. He will live in one side of the duplex ant rent the other side. He has already gutted and has sided the outside along with other improvements. The existing accessory structures in the rear of the property will be demolished. A new 6 car detached garage (1,872 sq. ft.) will be constructed. A front yard setback variance is needed for the garage along with a use variance for expansion of a non-conforming use and a variance for the distance between the buildings. The applicant also proposes a 240 sq. ft. deck on the Unnamed Road side. The deck will require a front yard setback and a use variance for expansion of a non-conforming use. The house is under the permitted building coverage, however the garage exceeds the coverage requirement for accessory structures.

The applicant proposes to use 2 of the bays and the tenant will use 2. The other 2 bays will be used to store the applicant's motorcycles and boats and things that he would

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otherwise be storing in the yard. Duplexes are not a permitted use in the TCC zoning district. Special reasons to support granting the use variance include maintenance of open space and the creation of a more desirable visual environment by getting rid of the unsightly outbuildings. The basis for granting the bulk variances is that the benefits substantially outweigh the detriments. The negative criteria are satisfied since the improvements are appropriately situated at the rear of the lot and do not result in any detriment to the public good. She sees no detriments at all in granting any of the variances. The proposed improvements would improve the appearance of the property. She believes there will be sufficient light, air and open space. The negative criteria will be satisfied since there will be no detriment to the public good.

James E. Schwaab, Professional Land Surveyor, was sworn in. He testified that the proposed 12 ft. x 20 ft. deck is 30 inches above grade. The deck would be located 38.6 ft. from the unnamed road where 50 ft. is required. The closest neighbor is the cemetery. The proposed 78 ft. x 24 ft. garage is large enough for 6 cars. Access to the garage will be off the unnamed road. The access off of Route 9 will be reconfigured to service the northern bays. The center of the garage will have a 25 ft. access way across the rear of the property off the unnamed road. The applicant proposes 12.2% accessory building coverage where only 5% is permitted. The impervious coverage would be 43.2% where 60% is permitted. The southern garage is currently encroaching into the front yard setback. He believes that the relief sought can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the ordinance.

Ms. McCrosson stated that the applicant proposes to put asphalt in front of the garage. The proposed garage will not be used for commercially and will not be rented.

The meeting was open to the public.

Walter Gillespie, 444 Corson Tavern Road, Seaville, was sworn in. He testified that the church feels this is an improvement to the site and they are in favor of the application.

The meeting was closed to the public.

There was discussion concerning COAH and if the applicant would use one of the units as a COAH unit. Ms. McCrosson requested to table the application until the July 10, 2008 meeting to review this with the applicant. She agreed to waive the tolling of time.

4. FRANK DIRENZO – BLOCK 559, LOTS 21.01 & 21.02 – BA12-08

Application is for a use variance for expansion of a non-conforming use and site plan approval to operate a Blitz's Market and 2 rental units at 3075 Route US 9 South, Seaville.

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Cory Gillman, Esquire, represented the applicant. The applicant purchased the property in June of 2007. It is the applicant's intention to use the first floor of the structure as a deli commonly known as Blitz's Market. The applicant received a notice from the zoning officer indicating that he must obtain site plan approval and a use variance prior to utilizing the property as a commercial use since it is located in the Residential zoning district. A change has been made to the plan to provide 28 parking spaces.

Gary Thomas, 25 McDonald Drive, Seaville, Licensed Land Surveyor and Planner, was sworn in along with Frank Drenzo, 298 70th Street, Avalon, NJ.

Mr. Dietrich testified that 2 spaces are needed for each of the units and the deli use requires 28 spaces for a total of 32 spaces.

Mr. Thomas testified that he prepared the site plan dated 4/1/08 revised 4/24/08 and 5/28/08. He described the current conditions on site. The stone parking area is located on the north side of the building. There is an existing 2-1/2-story structure with commercial space on the first floor and 2 residential units. The structure is setback 10.4 ft. from Route 9. This property is unique since it is part of a condominium with an automobile repair shop and unfinished furniture store. The closest building is 15 ft. from their building. The parking area is actually an easement that runs with the property.

Mr. Thomas testified that the parking currently does not comply with the ordinance requirements or the handicap requirements. The property is located in the Moderate Density Residential Zoning District (R2). There is a commercial entity on the property that has existed since the 1970's. There is a row of trees along Lot 22 that gets heavier towards the rear of the property. The building will not change except for the use will be converted into a deli/market. The proposed changes include handicap parking, cleaning up and enlarging the parking area, and installing a nuisance buffer along the north property line. They plan to add to the buffer that already exists. The stone parking will have minimal runoff. An asphalt apron will be added in the front to the handicap spaces to keep the stones off the road. The sign will not exceed 25 ft. and will remain in the same location. The proposed trash enclosure is shown on the plan. Various commercial uses have been operated on this site for many years. He believes the proposed improvements will be far better than what is there now.

Mr. Thomas described the other uses in the area that consist of several commercial uses and residences.

Mr. Thomas feels that the variances can be granted without substantial detriment to the public good or the intent and purpose of the zoning ordinance since they are continuing a commercial use on the site and because they will be reducing the nonconformities on the property. He believes the property is particularly well suited for this particular use since the property has always been used commercially. He feels the proposed use is in character of the neighborhood. He believes the use variance can be granted since the

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property will be made more conforming and that the benefits of the proposed improvements outweigh any detriments.

Mr. Thomas stated that a new septic system was recently installed. The applicant plans to use parking bumpers to delineate the parking spaces. There is a designated 10 ft. x 40 ft. area for deliveries on the north of the property.

Mr. Dietrich stated that the well is not shown on the plan. Mr. Thomas stated the well is east of the island shown on the plan. They intend to move the island on top of the well. Mr. Thomas will move the loading area so that it is not graphically displayed on top of the 2 parking spaces. He will also bump out the depressed curb so that the car parked at the last space can back out.

Mr. Dietrich stated that the stone parking area requires a design waiver since asphalt is required. He believes there is sufficient lighting to light the parking area. The ordinance requires that the applicant. The ordinance requires that the applicant only provide sufficient vegetation to supplement what exists.

Frank Drenzo testified that he is the owner of the property. He intends to operate a deli/grocery store on the first floor. There are 2 residential units that are utilized by his employees and are not rental units. He owns several Blitz's Markets throughout Cape May County. Blitz's Market sells take out food and groceries. There are no tables proposed inside or outside. The hours of operation are 8 a.m. until 8 p.m. The busiest time is between 11 a.m. and 1 p.m. and 4:30 p.m. to 6 p.m. Lunch is their busiest time. Deliveries such as bread, milk and soda are made daily. Their own trucks make most of the deliveries. Deliveries are made throughout the day. The average person takes 5 to 10 minutes in the store. He feels that 28 parking spaces are sufficient. It would be a substantial burden to him if the application were not approved since he purchased the property to utilize it as a deli.

Mr. Drenzo testified that he owns 16 – twenty foot standard box trucks. The trucks will not be stored on site. The store is open 7 days a week year round. There is a shuttle car to shuttle the employees to work. Most of the employees live on site and don't have vehicles. The employees are mostly from Russia and Poland. He is not sure how many of the employees are currently living in the units. He believes there are a total of 9 bedrooms and 4 baths in the units. He recently installed a new septic system with a grease tank.

Mr. Dietrich stated that the septic design last revised 9/25/07 is for a 10- bedroom dwelling and retail market. He announced there is a discrepancy in the lot numbers shown on the key map.

There was discussion concerning a new rental ordinance being passed by the Township regarding occupancy. The applicant agreed to comply with the ordinance.

The meeting was open to the public.

Hance Jaquett, Esquire, represented Ed and Suzanne Barr, owners of lot 21.05. His clients live behind the property and also own the parking easement. His clients object to the application. He stated that for jurisdictional reasons the 3-unit condo association should be listed on the application. He has reviewed condo documents; specifically paragraph L, P and P(4). He believes that written consent of the association must be supplied for the Board to have jurisdiction to hear the application. Mr. Gillman stated that the owners of the association were notified of the application. Solicitor Marcolongo stated that he is satisfied that the application can proceed jurisdictionally.

Mr. Drenzo testified that he is not sure when the building was used as a food establishment. He relied on information from his realtor that the property could be used for commercial uses. He wasn't aware that the well was located in the easement until recently. He has cut down the brush and dead trees on the north property line.

Mr. Thomas testified that a traffic study was not done. He believes the proposed use is no more intense than the previous antique store. He submitted a copy of a Deed of Easement; dated January 3, 1989. The easement was marked Exhibit P-1. Solicitor Marcolongo stated that limited questioning by the Board is reasonable, however the Board does not have the right to determine if the easement is valid. Mr. Gilman objected to hearing any testimony in regards to the validity of the easement.

Mr. Jacquett stated that the easement area is needed to be part of the site plan. He stated that the non-permitted use dramatically increases the intensity on site. For that reason he thinks its appropriate to hear his questions in regards to the easement.

Solicitor Marcolongo suggested that there has been no case law that deli's are an inherently beneficial use.

Mr. Thomas testified that he believes the site is particularly well suited since it has been used commercially since the 1970's. He believes the use is consistent with what has been there and will probably continue to be there.

Mr. Dietrich testified that the property has been zoned residential since at least 1994.

Edward Barr, 11 Argoe Drive, Seaville, was sworn in. He is the owner of the easement area and he lives behind the property. His parents purchased the property in the late 1960's. He gave a brief history of the property. There are 3 separate buildings in the condominium association. He purchased the easement from his father. The easement was to allow an entrance to the back property, which was landlocked at the time, and to have parking. In the late 1960's a café occupied the commercial space for about 2 years. There have been no other food service establishments since then. Unit 1 was his father's primary residence in the early 1980's.

Mr. Barr testified that the applicants well is located about 10 ft. from his property line. He did not give his consent to place the well in this location. There has been no discussion with Mr. Drenzo in regards to using the sign. He is opposed to the proposed use of the property since it expands upon the use of the easement. The proposed plan does not allow him access to lot 21.05. He has had discussions with Mr. Drenzo about purchasing the easement.

During cross-examination Mr. Barr testified that he did not know the well was on the property until Mr. Drenzo cut the trees down. He built the sign himself when his father owned the property. He did not object to the sign previously since other occupants had the courtesy to ask if they could use it. He feels the applicant has annexed the entire property. Part of his objection is that major improvements were done without his permission.

Mr. Drenzo testified that he has discussed with Mr. Barr the reasons for his objections. He feels that Mr. Barr is trying to force him to buy the property.

Due to the time the application was tabled until the next meeting scheduled for July 10, 2008. Mr. Gilman agreed to the tolling of the time.

RESOLUTIONS

1. VINCENT FLETCHER – BLOCK 730, LOTS 23 – 26 – BA03-08

A motion to adopt the resolution was made by Mrs. Burgin, seconded by Mr. Yakopcic, and approved. Abstain: Petrozza.

2. JOHN & DAVINA WECHSLER – BLOCK 851, LOT 4 – BA05-08

A motion to adopt the resolution was made by Mrs. Burgin, seconded by Mr. Yakopcic, and approved. Abstain: Petrozza.

3. JOHN McGRATH AND PATRICK FLANAGAN – BLOCK 567, LOT 50.01 – BA11-08

A motion to adopt the resolution was made by Mrs. Burgin, seconded by Mr. Yakopcic, and approved. Abstain: Petrozza.

BILLS

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

EXECUTIVE SESSION (10:54 P.M.)

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A motion to go into Executive Session was made by Ms. Petrozza, seconded by Mr. Phifer, and approved.

The Board went back on the record at 11:00 p.m.

ADJOURNMENT

A motion to adjourn the meeting was made by Mr. Petrozza, seconded by Mr. Phifer, and approved. The meeting was adjourned at 11:00 p.m.

Submitted by,

Shelley Lea