

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
OCTOBER 9, 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, Jeffrey Pierson, Andrew Shawl, Lynn Petrozza, Matthew Unsworth, Paul Casaccio.

Absent: Christopher Phifer and Kenneth Yakopcic.

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

Mr. Unsworth acted as Chair.

APPROVAL OF THE SEPTEMBER 11, 2008 MEETING MINUTES

A motion to approve the minutes was made by Mr. Klepac and seconded by Mr. Pierson. In favor: Burgin, Klepac, Pierson, Shawl, Unsworth, Petrozza, Casaccio.

APPLICATIONS

1. **BLOCK 567, LOT 27 ASSOCIATES – BLOCK 567, LOT 27 – BA12-08**

Continuation of an application for amended site plan approval for changes at Osprey Point, 1731 Route US 9 South, Palermo.

Jules Konschak, Esquire, represented the applicants. He gave a brief description of the testimony given at the previous meeting. Since the previous meeting revised plans have been submitted that are dated 6/16/08.

Vincent C. Orlando, Professional Engineer, was sworn in. He stated that the plans have been amended to extend the grass pavers 50 ft. for a total of 150 ft. along with a 4 ft. wide asphalt sidewalks leading to each gazebo. The sidewalks will conform to the ADA requirements. A bridge will be provided over the stone area on one of the walkways. He feels these are the best locations for the walkways given their purpose and the

topographic conditions. He feels this will be a safe and effective ingress to the gazebos. The original plan indicated walking paths of stone or mulch. The sidewalks will not cause any problems with drainage.

The meeting was open to the public.

John O'berg, Unit 10, was sworn. He submitted a handout that was marked as P-1. He would like the grass pavers to be extended beyond the berm. His wife is handicapped and likes to sit on the porch. He would like her to see the pavers rather than the gray stone that is there now.

Trisha O'berg, Unit 10, was sworn. She stated the new plan doesn't show the depressed curb. Mr. Orlando confirmed it is not show but that depressed curb would be added.

Bruce Singer, Unit 129, was sworn. He does not agree there are no drainage problems where each of the sidewalks is being located. The entire area is always saturated. He feels the access to the gazebos will be longer now than before. He believes that removing a tree and installing concrete will exasperate the drainage problem. He believes grass pavers to the gazebo would improve the aesthetics. He feels he is losing aesthetic value of his home.

Mr. Dietrich doesn't believe the sidewalks or grass pavers leading to the gazebos would aggravate any conditions on site. The grass pavers would blend in with the grass making it difficult to see the edges.

David Rehman, Unit 87, was sworn. He agrees with the others. He prefers the developer use the original plans. He feels the accesses to the gazebos are necessary for those that are handicapped. He would like the developer to replace any trees that are taken out to install the sidewalk. He feels this is the least serviceable location for the walkways.

Mr. Korschak suggested tinting the concrete leading to the gazebos.

Aldo Palombo, Unit 98, was sworn. He stated there are rocks in phase III and he is concerned someone will fall over them. He feels it is imperative the bridge is placed over the rock bed.

Tom Carroll, Unit 2, was sworn. He offered that the access road could be made narrower to make the grass pavers deeper.

It was determined that if the width of the road were reduced to 20 ft. the pavers could be extended 190 ft. into the development. It was also determined that any landscaping removed to install the sidewalks would be relocated or replaced.

Sue Farrell, Unit 33, was sworn. She is a member of the Board of Trustees. She is concerned about the trees being removed.

Mr. Korschak stated that when the access road is finished it will be turned over to the association for maintenance.

Barbara Rehman, Unit 87, was sworn. She is concerned about the beginning of the sidewalk that is next to her driveway. If someone is coming from the street they will need to use her driveway to access the sidewalk. She is concerned about people parking on the road.

Mr. Orlando agreed to move the access point as far away from the driveway as practical.

Mr. Singer addressed the parking.

The meeting was closed to the public and returned to the Board for finding of facts.

MR. SHAWL – The applicant Block 567, Lot 27 Associates are the owners of 1731 Route 9 South in Palermo know as Block 567, Lot 27. They are requesting amended site plan approval for minor changes to the original site plan for Osprey Point, a 149-unit age restricted housing development. The revisions include lighting, realignment of the emergency access road, access to the gazebos and courtyards, clubhouse detail, courtyard details, elimination of the emergency access to the retention pond and 4 parking spaces along with other minor details shown on the plan. The project requires 298 parking spaces and 507 are provided. The access to the retention pond is no longer needed since there are fire hydrants throughout Osprey Point. The applicant has provided additional recreation facilities than required. The elimination of the light would not have a negative impact. The plan now shows ADA accessible sidewalks to the gazebos. Many of the residents of Osprey Point testified during the public portion of the meeting. The emergency access road will be reconfigured so that it is 20 ft. wide. The grass pavers will be extended 190 ft. and will go beyond the berm between units 10 and 11. This seems to resolve the negative comments in regards to the existing stone access. The developer will replant the trees and landscaping that is removed as a result of the access to the gazebos. When the emergency access is completed the area fronting Route 9 would be cleaned up and landscaped. The residents have concerns about the parking and drainage.

MRS. BURGIN – Mr. Dietrich stated due to the size of the property and the complex issues the changes could not be handled administratively. He also indicated more parking spaces are provided than required by RSIS. The revised plan includes ADA compliant sidewalks leading to the gazebos. She believes the changes can be granted without any substantial detriment to the public or the residents of Osprey Point. The plan continues to provide open space and recreation.

MS. PETROZZA – Testimony was given that the entrance would be moved south as far as possible in Phase III. The trees will be replaced or relocated. She concurs with her colleagues.

MR. KLEPAC – Mr. Korschak gave an overview of the previous meeting. He concurs.

MR. PIERSON – He concurs. He feels the applicant conforms to section 40:55D (b), (i) and (k).

MR. UNSWORTH – The developer will create a bridge over the stone area. If the homeowners chose to the developer will tint the sidewalks.

A motion was made by Mr. Klepac and seconded by Mr. Pierson to grant amended preliminary and final site plan approval, if the homeowners association decides they want it the walking paths will be tinted for aesthetic purposes, a bridge will be constructed over the stone trench in phase III, the grass pavers in the emergency access will now be 20 ft. x 190 ft., the walking path in phase III will be moved as far south as possible. In favor: Burgin, Klepac, Pierson, Shawl, Petrozza, Unsworth.

There was a short break at this time.

2. KRISTINA WRIGHT – BLOCK 348, LOT 84 – BA23-08

Ms. Wright requested to table the application until November 13, 2008 due to the length of the agenda. She agreed to waive the tolling of time. There will be no further notice.

3. RALPH & DEANNA HOLT – BLOCK 652.01, LOT 19 – BA21-08

Application is for amended site plan approval, a use variance for expansion of a non-conforming use, lot area and depth variance, a waiver of prior conditions of approval, a parking variance and relief from the impervious coverage, landscaping and buffering requirements at Ralph's Bagels, 121 Tuckahoe Road, Marmora.

Paul Casaccio arrived at this time and Mr. Unsworth left the meeting due to a conflict.

Kristopher Facenda, Esquire, represented the applicants. The amendments to the site plan include additional on site parking, relocation and redesign of the site storm water management basin, provide landscape and lighting as shown on the plan, provide for relocation of the trash enclosure and for the number of tables and chairs in/outside the deli.

Solicitor Marcolongo stated the Board must determine res judicata as to whether the application is substantially different than the first application.

Mr. Facenda stated that res judicata is not present in this case. The same relief is not being sought today as was in 2007. The primary relief sought in 2007 was a use variance to use the second floor for catering. The intent of the second floor does not change from what was previously approved and will remain storage and office area.

Vincent Orlando, Professional Engineer, was sworn in. He testified that he was involved in the 2007 application. In his opinion this application is substantially similar. The use of the facility will remain the same, however they are requesting site plan amendments to utilize the site for expanded parking, relocating the drainage and things of this nature. He

feels the 2 applications are not at all similar since the applicant is no longer asking to use the 2nd floor for catering. He gave some examples using case law.

Mr. Orlando stated that the main difference in the applications is that the 2nd floor is no longer part of the application. They are only requesting to expand the parking and relocate the drainage. He feels that eliminating the request for a catering facility on the 2nd floor is a substantial change. The items that are similar in the applications are the parking and relocated drainage.

Mr. Dietrich commented that the outside seating is normally not regulated. The applicant is trying to legalize the outside seating since it was discussed at the previous meeting.

Mr. Orlando stated that the original application included only 3 tables inside the deli and there are currently 6 tables. This doesn't change the parking criteria. Solicitor Marcolongo explained that when the applicant appeared before the Board in 2007 he orally requested 6 tables each with 4 seats.

Mr. Orlando stated the parking, relocation of storm water drainage, location of trash enclosure and lighting is the same as the previous plan, however the landscaping has been increased. He stated the irrigation would be reconnected.

Mr. Facenda stated that last application dealt with an intensified use of the second floor and miscellaneous site improvements. The primary focus is now the site improvements, which he feels advance the positive and negative criteria.

Mr. Dietrich verified there are 6 spaces more than required. He feels the additional spaces are needed. A waiver is needed for the size of the parking stalls.

The meeting was open to the public.

Keith Jack, 44 Stagecoach Road, Marmora, was sworn. He stated that the plan dated 1/4/07 is the same plan as the Board denied previously.

Wayne Jack, 115 Stagecoach Road, Marmora, was sworn. He stated that only one thing has been changed on the plan. He does not feel this is a substantial change.

Hearing no further response the meeting was closed to the public.

There was discussion concerning what was reviewed at the previous hearing.

The meeting was once again open to the public.

Keith Jack, previously sworn, agrees additional parking is needed, however 33 spaces are overkill. This many spaces will make it necessary to locate the dumpster in front of his

brothers home. He stated this is the same applicant and the same plan. There are the same amount of parking spaces and tables being requested. The dumpster is in the same location. He feels this is not substantially different. The 33 parking spaces were for both floors.

Wayne Jack, previously sworn, stated the application remains the same. Only 1 out of 5 things have been changed. He feels the changes are not substantial.

James Ginn, 9 Magnolia Court, Palermo, was sworn. He is the owner of Block 652.01, lot 17, a vacant lot within 200 ft. of the applicant. He believes the application is substantially different since the 2nd floor use is no longer an issue.

The public portion of the meeting was closed and returned to the Board for findings of fact.

MR. PIERSON – Ralph and Deanna Holt, owners of 121 Tuckahoe Road in Marmora, Block 652.01, Lot 19. They are proposing to increase the number of onsite parking spaces, relocate and redesign the storm water management basin, amend the landscaping and lighting plan, relocate trash enclosure and increase the number of tables and chairs in the 1st floor deli. The Board Solicitor has informed the Board they must determine res judicata, if the application is substantially the same or substantially different prior to hearing the application. Kristopher Facenda stated the application is less proportion. Mr. Orlando feels the application was viprodated at the previous meeting. Items on the site plan that are similar include the number of parking spaces, relocation of storm water basin, 9 outdoor seats, 24 indoor seating. The differences are the proposed use variance for the intensified use of the 2nd floor has been eliminated, the deficiencies have supposedly been removed from the previous testimony and the variance for the outside parking is no longer needed.

MR. SHAWL – The parking layout, storm water layout and location of the trash enclosure shown on the plan is the same as before. Vince Orlando testified the landscaping has been increased. Two property owners within 200 ft. testified the plan is the same and one testified the plan is different. There is no change to the building itself and the storm water basin is only slightly larger.

MS. PETROZZA – The design waiver for parking is the same as the previous application.

MRS. BURGIN – The owners are the same as well as the subject matter. The location of the storm water basin is the same as the last plan as well as the number of tables inside, number of tables outside, the location of the trash enclosure, waiver for size of parking spaces and lighting. Some additional landscaping has been added. Resolution BA01-07, number 12, stated that Mr. Orlando testified there is no change to the existing building and the storm water basin is only slightly larger. The difference is the removal of the proposed 2nd floor use.

MR. CASACCIO – He feels the site plan issues are substantially the same. By removing the catering facility the required parking is met.

Mr. Facenda requested a 5-minute recess to talk with the applicants.

Mr. Facenda stated they are comfortable they have made significant changes to the application by the change in 2 uses to 1 and the elimination of a parking variance.

The meeting was open once again to the public. Hearing no response the Board was asked for findings of facts.

MR. KLEPAC – Whether substantial or not substantial there are differences.

There were no other findings.

Mr. Klepac made a motion and Mrs. Burgin seconded, that the application submitted is significantly different such that the theory of res judicata does not apply and that the Board has jurisdiction to hear the matter on its merits. In favor: Klepac, Pierson, Casaccio. Opposed: Burgin, Shawl, Petrozza. The Board determined that the application is not substantially different and that res judicata applies.

4. NATHAN & MAUREEN DORON – BLOCK 829, LOT 3 – BA22-08

Applicants are requesting rear and side yard setback variances and a waiver for the size of the parking spaces to construct a single-family dwelling at 6 Randolph Avenue, Strathmere.

Arthur T. Ford, III, Esquire, represented the applicants. Rebecca Lauer, Registered Architect with Asher Associates Architects, LLC, was sworn.

Nathan Doron, 701 Commonwealth Avenue, Strathmere, NJ, was sworn. He testified that he is the co-owner of the property with his in-laws. After the application is approved his in-laws will execute a quitclaim deed relinquishing all rights.

Ms. Lauer testified the septic would be located in the front yard to maintain the distance needed to another septic. The location of the septic pushes the building toward the rear of the property. The building is located within the setbacks, however the balcony encroaches into the side yard setback requiring a variance. The distance to the air conditioning platform in the rear is 9.2 ft. The front yard setback is 49 ft. They propose 5 off street parking spaces. The garage was designed for 9 ft. x 18 ft. parking spaces.

Ms. Lauer testified the proposed house is a 1910 – 1915 shingle style beach home. She feels this is architecturally compatible with the neighborhood. She feels the Board can grant the variances without a detrimental effect on the master plan or zoning ordinance. She feels the application benefits light, air and open space. There is a gutter system proposed. She agreed to tie the down spouts into a storm water trench.

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

MR. PIERSON – Nathan and Maureen Doron are the owners of 6 Randolph Avenue, Block 829, and Lot 3. They are requesting a rear yard setback variance 30 ft. require, 9’ 2” proposed. A side yard setback is requested to allow 5 ft. where 6 ft. is required. There is also a waiver needed for the size of the parking stalls. Based on the engineer’s recommendation the applicants agree to tie gutters into a storm water trench. The location of the septic pushes the house into the rear yard setback.

MR. KLEPAC – Arthur Ford, Esquire, represented the applicant along with Rebecca Lauer, Registered Architect.

MR. SHAWL – The applicant provided testimony and photos demonstrating the architecture of the house will fit in with the area.

MS. PETROZZA – There was no public comment. The proposed structure satisfies section c, providing light, air and open space.

MRS. BURGIN – The applicants are requesting a rear yard setback variance due to the location of the septic. She believes relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning ordinance.

A motion was made by Mr. Pierson and seconded by Mr. Klepac, to grant the requested variances with the standard conditions. In favor: Burgin, Klepac, Pierson, Shawl, Petrozza, Casaccio.

RESOLUTIONS

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

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

2. CHRISTOPHER & JODI GEORGE – BLOCK661, LOT 63 – BA19-08

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

BILLS

A motion to approve the bills for payment was mad by Mr. Klepac, seconded by Mr. Pierson, and approved.

DISCUSSION

Mr. Dietrich informed the Board he has a conflict with one of the application for Stewart and Marion Segin. It was determined that Charles Kona would be contacted to see if he was available to act as substitute engineer for this application.

A motion to use Mr. Kona as substitute engineer was made by Mr. Pierson, seconded by Mr. Klepac, and approved.

ADJOURNMENT

A motion to adjourn the meeting was made by Mr. Pierson, seconded by Ms. Petrozza, and approved. The meeting was adjourned at 10:45 p.m.

Submitted by,

Shelley Lea