

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
SEPTEMBER 11, 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, Jeffrey Pierson, Andrew Shawl, Matthew Unsworth, Lynn Petrozza, Kenneth Yakopcic and Chairman Paul Casaccio.

Absent: None

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

**SWEAR IN BOARD PROFESSIONALS**

**APPROVAL OF THE AUGUST 14, 2008 MEETING MINUTES**

A motion to approve the minutes was made by Mr. Pierson, seconded by Mrs. Burgin, and approved.

**TABLED APPLICATIONS**

The following application was tabled until October 9, 2008 at the request of the applicant. The applicant has agreed to waive the tolling of time. There will be no further notice of this application.

1. SHORE KIDS, LLC – BLOCK 841, LOT 9 – BA20-08

**RESOLUTIONS**

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

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

2. CHARLES DOYLE – BLOCK 826, LOTS 10 & 10.01 – BA17-08

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

**BILLS**

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

**APPLICATIONS**

1. CHRISTOPHER AND JODI GEORGE – BLOCK 661, LOT 63 – BA19-08

Christopher and Jodi George, 13 Redwish Avenue, Marmora, were sworn in. Mr. George testified that they are replacing the existing 3'1/2" x 5'1/2" concrete steps with a new 9'9" x 18'6" wood deck in the front of their single-family dwelling.

Mr. George testified the front yard setback requirement is 50 ft. and they are proposing 23.7 ft. The proposed deck would be located closer to the street than the houses on the adjoining lots therefore requiring a variance.

Mr. George testified that the new deck would be compatible with other decks in the neighborhood. The photos submitted as part of the application show the house 2 lots away that will have a similar setback. The deck will maintain light, air and open space. The deck will not have a roof.

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

MR. KLEPAC – He believes the appearance of the dwelling will be greatly enhanced and that the new deck will improve safety.

MR. PIERSON – Christopher and Jodi George are the owners 13 Redwish Avenue in Marmora also known as block 661, lot 63. They are before the Board requesting a front yard setback variance to remove the existing steps and replace them with a wood deck. They are requesting the setback to be 23.7 ft. where 50 ft. is required. There was no public comment. The applicants believe the entrance will be safer with the new deck. The house with the new deck will be in keeping with the neighborhood. There is a house 2 doors down with the same front yard setback.

MS. PETROZZA – She believes the variances can be granted in compliance with special reason C and I. The new structure will be compatible to others in the neighborhood.

MRS. BURGIN – The new deck will not protrude into the setback any further than the sidewalk. The house currently meets the setbacks since it is not any closer to the road than the adjacent properties. She believes the variance needed to construct the deck can

be granted without substantial detriment to the public and will not impair the intent and purpose of the zoning plan or zoning ordinance.

A motion was made by Mr. Pierson and seconded by Mr. Shawl, to grant the front yard setback variance with the standard conditions. In favor: Burgin, Klepac, Phifer, Pierson, Shawl, Unsworth, Petrozza, Yakopcic, Casaccio.

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

Continuation of an application for preliminary and final site plan approval and use variance for expansion of a non-conforming use and waiver to permit parking on a stone surface rather than asphalt.

Mr. Pierson stepped down since he did not hear the previous testimony.

Cory Gilman, Esquire, represented the applicant. He stated that new plans were submitted to the Board last revised 07/09/08. The new plan revises the parking situation so that relief is no longer needed for the number of parking spaces.

Solicitor Marcolongo briefed the Board on what happened at the previous meeting. The application was originally before the Board June 12, 2008. The property is located in the R2 Zoning District. This is a mixed use since there is commercial on the first floor and residential on the second floor. There were only 28 parking spaces provided on the previous plan were 32 spaces were needed. The revised plan shows that the parking area will be extended toward the east to provide 32 spaces. The applicant is the owner of lot 21.01 but has an easement to permit parking on lot 21.02. There is currently a dispute as to the validity of the easement, however the Board will not resolve this matter.

During the previous hearing the applicant agreed this would be a take out business only. There would be no tables and the occupancy of the rental units would comply with any future ordinances. The property would be deed restricted so that the units upstairs not being used to house the applicant's employees would be placed in the Townships COAH inventory. The lot shown on the plan as 21.02 is actually partially lot 21.05.

Gary Thomas, Professional Planner, testified the changes on the revised plan were due to the concerns raised by the Board and the public. The changes to the plan include the loading area being moved forward so that it no longer overlaps the parking spaces; a curb will be installed around the well; 2 handicap spaces will be added in front of the building; the parking area has been extended so a variance is longer needed; the existing vegetation along the side and back of the property will remain and new landscaping will be added; depressed curbing has been added at the engineer's request. The 2 landscaped islands in the parking area have been made smaller.

Hance Jaquett, Esquire, was present representing Edward Barr.

Mr. Barr testified that he has reviewed the revised plan. The additional 4 parking spaces on the revised plan increases the use of the variance and utilizes more property. The area will be more congested and will create more liability for him as the owner of parking easement. When his Father owned the property it was a small antique shop with only 7 parking spaces. He believes all the additional parking will create a hardship for him in regards to liability. He didn't anticipate this type of use on the property. He is concerned about what type of tax impact he will receive from the parking improvements.

Mr. Barr discussed photos of the WaWa in Greenfield showing Township trucks and dump trucks in the parking lot. He is concerned the trucks will park on Argoe Drive, which would increase traffic on this cul-de-sac street. The curb and the trees will block access to his lot in the rear of the property.

Mr. Barr testified that he met the tenants of the property when the well broke and they had no water. He asked them how many people were living in the apartment and they told him about 35 kids. He believes the applicant is using the units as a boarding house. The photos of the Greenfield WaWa taken 7/3/08 were marked as Exhibits O-1 and O-2. A photo showing the subject property was marked as Exhibit O-3.

Mr. DiRenzo testified that one of the units was vacant except for one person from July 4<sup>th</sup> till present. The other unit had 12 or 13 occupants. In the beginning of the summer there were 20 or 25 occupants. There were never 35 occupants at one time.

Solicitor Marcolongo stated that he contacted the Cape May County Department of Health and was told the septic system for this property had been designed to allow commercial downstairs and 7 bedrooms upstairs. They do not control the number of people in the building.

Mr. Dietrich testified there is currently no occupancy limitation in the Township for rentals or private homes.

Mr. DiRenzo testified there are normally between 6 and 10 cars in the parking area. He does not believe his operation will attract dump trucks or oversized vehicles.

Curtis Corson, 3065 Route 9, Seaville, was sworn. He has an interest in the 4 properties north of the easement. He doesn't believe the description of the area given by the applicant is accurate since there are more residential lots than indicated. There is also 128 acres of farmland not included in the testimony. He stated that the big tree where the applicant cleaned up is actually on his property and not the applicants. All of his trees were cut down. He discussed the septic was dug up and left open for 60 days until he contacted the Board of Health. He also made calls when the top of the well was smashed off and again when an electric cord was run from across the stone parking lot to the well. When the septic failed they installed outside showers without permits. He would like fence around the entire property and the sign moved to the center of the property. He requested that vehicles are parked in the assigned parking stalls. He submitted a photo

showing one of the applicant's stores in Cape May Court House where he is using a painted vehicle as a sign. A copy of the photo was marked as O-4. He does not feel the applicant takes care of his employees living at the site. He feels there is no hardship associated with the variances.

Mr. Gilman stated the applicant is no longer requesting any hardship variances. His client would be willing to place a fence along the boundary line. It was agreed that a 6 ft. high solid white vinyl fence would be installed from the elm tree back. The berm shown on the plan will be eliminated. They agree to comply with the future occupancy limits. They agree to petition DOT for no parking signs on Route 9.

Donald Argoe, 22 Argoe Drive, Seaville, was sworn. He is concerned about the parking area not being able to handle oversized vehicles. There are 9 kids living on the street and he is concerned this will become a high traffic area. He is also concerned that large vehicles may park on the shoulder of Route 9 and cause visibility problems.

Mr. Jaquett summarized by saying the applicant has not shown any special reasons for granting the use variance. There is no hardship evident to grant the variance. He also commented that deli's are not an inherently beneficial use. The property is located in a residential zone. The applicant is asking for site plan approval that includes his client's property. Besides parking, the applicant proposes a sign, a well and now a fence on Mr. Barr's property. He feels the Board should evaluate the impact of the applicants proposed use on Mr. Barr's property. He requested the Board deny the application.

Mr. Gilman feels the 4 parking spaces they added to avoid the parking variance does not increase the use or the amount of use in the easement since the applicant has testified there would be only 6 to 8 cars at the busiest times. He stated that Mr. Barr is entitled to petition the tax assessor and reduce the taxes since he is not entitled to use the area. Mr. DiRenzo will comply with all Municipal requirements including the occupancy ordinance when it is adopted. He believes they have shown there is not a substantial detriment to the zone plan. He believes the issue of the easement is up the court to decide.

Hearing no further comment the meeting was closed to the public and returned to the Board for findings of fact.

MR. SHAWL – The applicant Frank DiRenzo is the owner of 3075 Route US 9 South in Seaville shown on the Tax Map as Block 559, Lots 21.01 and 21.05. The lot is 21.05 not 21.02 as shown on the application. The applicant is requesting a use variance for the expansion of an existing non-conforming use, preliminary and final site plan approval and a waiver to park on crushed stone. The applicant has agreed to comply with future occupancy rules in the Township. The applicant has revised the parking so a variance is no longer needed for the number of spaces and to petition DOT for a no parking sign on Route 9. Testimony was provided by the applicant's engineer that continuing the commercial use would not adversely impact the zoning plan and that the current plan reduces the non-conformities. The proposed lighting will not negatively impact the

neighbors. The hours of operation would be 8 a.m. until 8 p.m. Mr. Barr testified that the applicant did not ask permission to increase the size of the sign. He submitted photos showing parking at the Greenfield WaWa. There was a food establishment at this location in the 1960's. The septic was designed for a commercial use on the first floor and 7 bedrooms upstairs. Curtis Corson testified there is residential and farmland in the area. The applicant cleared trees and brush on Mr. Corson's property without permission. Mr. Corson submitted a photo showing advertising on a vehicle sitting in the buffer at the Cape May Court House store. Mr. Jaquett indicated that the applicant did not provide any special reasons for granting the use variance. The applicant has agreed to install a fence.

MRS. BURGIN – There has been no traffic study done. There is no ordinance regulating the number of people in a bedroom. The applicant has agreed to comply with any future rental ordinance in the Township. The property is zoned residential but has been used as a mixed use. The well and sign are pre-existing in the easement. Photos 01 and 02 show the WaWa on Route 50. No other deli was shown. Mr. Barr has concerns about increased use in the easement and congestion and liability. He will no longer have access to his property from the easement. The applicant has agreed to install a 6 ft. white vinyl fence as requested by Mr. Corson. The berm shown on the plan will be eliminated. She believes the application complies with special reasons G. She believes that granting the variances would not be a detriment to the public good and would not impair the intent and purpose of the zoning plan.

MR. YAKOPCIC – The employees are relocated depending on where they will be needed to work.

MR. KLEPAC – The proposed use is not inherently beneficial.

MR. CASACCIO – If the employees vacate the apartments the apartments would be added to the COAH inventory.

A motion was made by Mrs. Burgin and seconded by Mr. Yakopcic, to grant preliminary and final site plan approval, use variance for expansion of a non-conforming use and a waiver to allow stone parking, with the standard conditions and that there will be take-out food only and no tables, occupancy for the residence will comply with the Townships future residential rental housing ordinance, deed restrict the rental units so if they are no being used by employees they will be placed in the COAH inventory, revise the plans to evidence that lot 21.02 is now 21.05, the landscaping on the north and east side will be supplemented, there will be a 6 ft. high solid white vinyl fence on the north property line, there will not be a berm, the applicant will petition the DOT for a no parking sign in the front of the building. In favor: Burgin, Klepac, Phifer, Pierson, Shawl, Yakopcic. Opposed: Petrozza and Casaccio.

### 3. BLOCK 567, LOT 27 ASSOCIATES – BLOCK 567, LOT 27 – BA15-08

Applicant is requesting amendments to final site plan approval for changes at Osprey Point, 1731 Route US 9 South, Palermo.

Mr. Casaccio and Mr. Yakopcic did not participate in discussion or voting on this application.

Julius Konschak, Esquire, represented the applicants. This project was before the Board on 3 other dates. Resolution No. BA17-98, which approves a use variance for the density and bulk variances was included in the application along with Resolution BA28-00, which grants preliminary site plan and additional bulk variances and Resolution BA28-01 that granted final site plan approval. Most of the buildings have been constructed and are currently occupied.

Mr. Konschak stated that one of the streetlights was removed due to a problem with wiring. When the application was approved a water treatment plant was included on the plan. Since that time public water has been supplied and the treatment plant is no longer needed. Changes have been made to the emergency access road located on the north side of the property. Originally a portion of the access road was to be asphalt and the rest was grass pavers. The detail has been changed to a crushed stone surface with grass pavers. There will not be any change in the easement language. The walking paths running through the 3 courtyards have been eliminated. There were meetings in regards to the paths and the Osprey Point Board of Trustees approved the recommendation to eliminate the paths. The applicant agreed to install 3 gazebos and buy additional equipment for the clubhouse. Minutes of the Committee held on January 29, 2005 were submitted and marked as A-1. The minutes and committee reports from the Board of Trustees meeting on April 7, 2005 were marked as A-2. Another change eliminated the parking pod with 4 spaces on Osprey Drive. The access road in the rear by the retention pond is no longer needed since there is public water and fire hydrants. The pool, shuffleboard and tennis courts are on site but not in the location shown on the plan. There are some details such as gated access that haven't been completed.

At the completeness meeting there were concerns as to whether the walking paths would provide access to the rear of the buildings for emergencies. He contacted the fire company and rescue squad and has received a response from Jay Potter, Chief of the U.T. Rescue Squad. Mr. Potter states the concrete walkways are not needed since the rescue squad can travel across the grass. The letter dated July 9, 2008 was marked as A-3.

Solicitor Marcolongo marked 4 photos of the subject property as A-4, A-5, A-6 and A-7.

Vincent Orlando, Professional Engineer, was sworn. He testified the on site lighting is more than adequate. The original proposal was an asphalt surface from Osprey Point leading to the water treatment facility. This was eliminated when public water was available. The first 100 ft. of the access road was to be grass pavers for aesthetics and the rest crushed stone. For some reason the road was aligned differently than on the plan. The fire company approved the realignment for emergency access.

Mr. Orlando commented there are a tremendous amount of sidewalks throughout the property. They provided 507 parking spaces under the RSIS standards where 298 spaces

were required. The 4 spaces they want to eliminate became difficult to install due to the grading. The access near the pond is not needed because of the public water. The clubhouse changed configuration and is now larger than proposed. The tennis courts are on the other side and the pool decking is larger. All the facilities shown on the original plan are built but arranged a little differently.

Mr. Dietrich stated that due to the size of the property and so many complex issues the changes could not be handled administratively and the applicant was required to come to the Board to sum up all the issues at one time. In 1999 this project required a use variance where today it would not need a use variance. The only thing they don't comply with is they would have needed to set aside 20% for affordable housing. The applicant has installed more parking spaces than required by RSIS. He was aware of the changed to the clubhouse. The original plan proposed 100 ft. of asphalt and then the pavers to Route 9.

George Dudzek, 1731 Route US 9 South, Palermo, was sworn. He is the President of the Home Owners Association. He testified that the access road is an eyesore. They would like the grass pavers to go back to the grass, approximately 50 ft. He asked that the stone be rolled down so people can walk easier.

Tony Caruso, Osprey Point, was sworn. He testified they have meetings and gatherings at the gazebos and the sidewalks are necessary. He is concerned about access to the gazebos and ADA requirements. There is poor drainage in sections 2 and 3. He would like the access road to be grass pavers and not rocks to make it look nice.

John Oberg, 1731 Route 9, unit 10, was sworn in. His unit faces the access road. He wants the grass pavers extended beyond the berm.

Paul Walton, 1731 Route 9, Unit 11, was sworn. He lives on the opposite side of the emergency road from the Oberg's. He was assured by the salesperson the emergency road would be grass pavers and landscaped. Their front door is about 30 ft. from the crushed stone. There are weeds growing in the crushed stones and it is unsightly. He would like the pavers moved back 100 ft. He believes the pavers have a significant impact on the value of his home.

Susan Farrell, 1731 Route 9, Unit 33, was sworn in. Her concern is access to the gazebos. There are a number of residents that are elderly and walk with walkers or wheelchairs. She would like to see paths to the gazebos.

John Carroll, 1731 Route 9, Unit 2, was sworn. He believes the access road is an eyesore to the residents. He is in favor of grass pavers.

June Walton, Unit 11, was sworn. She stated that the access road was to be pavers and landscaping. She believes the road is a disaster. The road is ugly and is an eyesore to the community. The crushed stone is awful and it is right outside of her door.

Trisha Oberg, Unit 10, was sworn. She wants grass pavers not crushed stone in the access road. The entrance off of Osprey Drive onto the access drive was supposed to be a depressed curb but it is currently stone and dirt. She is handicap and can't get there without a scooter. She feels it is important to have at least one walkway to get to the gazebos. She feels that everything should be accessible especially in an over 55 adult community.

Paul Fritz Fred 34 Osprey Point, was sworn. He feels they need better access to the gazebos since so many of the residents are handicapped. He wants access to the pond.

Frank Roash, unit 20, was sworn. He believes something needs to be done to approve the appearance of the emergency road. He stated that some of the residents are not able to get to the gazebos. He addressed the drainage issues.

Ernest Casaccio, 115 Osprey Point, Unit 9, was sworn. He stated that the stones are difficult to walk or ride a bicycle on. He doesn't believe the stones will work in this area. He feels the walking paths are needed as shown on the original site plan.

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

There was a short break at this time.

Vice Chair Unsworth announced the applicants would like to table the application to review the concerns that were raised by the residents. If changes are made to the plan the meeting will be open to the public again for additional comments. The application was tabled until October 9, 2008. No further notice is required.

### **ADJOURNMENT**

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

Submitted by,

Shelley Lea