

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
APRIL 6, 2009

A special 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.

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Present: Mary Jean Burgin, Ted Klepac, Christopher Phifer, Jeffrey Pierson, Andrew Shawl, Matthew Unsworth, Lynn Petrozza and Paul Casaccio.

Absent: Kenneth Yakopcic.

Also in attendance were Dean Marcolongo, Board Solicitor; Charles Kona, Acting Board Engineer; Shelley Lea, Zoning Officer and Board Secretary.

TABLED APPLICATIONS

Chairman Casaccio announced that at the applicants request the following application has been tabled until May 14, 2009. The applicant has agreed to waive the tolling of time. No further notice will be given.

1. T & R HOLDINGS, LLC – BLOCK 348, LOT 1.01 – BA05-09

APPLICATIONS

1. SHORE KIDS LLC T/A TWISTIES TAVERN – BLOCK 841, LOT 9 – BA20-09

Continuation of an application for a use variance for expansion of a non-conforming use, variances for lot depth, parking, rear and front yard setbacks, building coverage and lot coverage along with preliminary and final site plan approval to raise the building flood elevation, construct a handicap ramp, re-establish use of one bedroom apartment and relocate the shed at 236 Bayview Drive, Strathmere.

Christopher Baylinson, Esquire, represented the applicants.

Timothy Michel, Licensed Professional Planner, was previously sworn. He testified that he visited the site between November and February. He never asked to do a visual

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inspection inside the property. He has looked through the files from the zoning and construction offices. He discussed the difference in parking for restaurants and tavern

uses. He is not aware of when the use became non-conforming. He agreed there is landscaping and a fence that runs along part of the McNally property.

Mr. Baylinson submitted 2 photographs that were marked A-10 and A-11 that were taken by Denise Riordan. Mr. Michel stated the landscaping and fence shown in the photos only screens the driveway and not the restaurant or outside deck.

Mr. Baylinson reviewed testimony given by Mr. Michel at the previous hearing regarding parking and floor area.

Mr. Michel testified they have no objection to the building being brought into compliance with FEMA regulations. He testified in regards to the social impact. He referred to the expansion in the use and activity. He suggested that eliminating the bathrooms in the restaurant area would increase the floor space. He stated that the plan from 1981 shows the space dedicated to the kitchen and restaurant area is much smaller.

Mr. Baylinson submitted a menu from the Strathmere Inn Bar & Restaurant when it was owned by Jimmy and Rose Twist. The menu was marked A-12.

Denise Riordan, 1 E. Seacliff Avenue, Strathmere, was sworn. She testified that according to the fire inspector that does the inspections every year in 1977 the uniform fire code started for new construction. Their building is grand fathered since it was in existence at that time and it is for either 89 or 99 seats.

Peter Lomax, Lomax Consulting, Cape May Court House, NJ, was sworn. He works as an environmental consultant and land use permitting. He has handled a series of permits for the applicants pertaining to the renovations in regards to waterside structures. Permits were needed from the DEP, Waterfront Development Permit for the coastal program and Army Corp of Engineers for authorization of the proposed improvements. The existing wood pier that is being reconstructed as shown on Exhibit A-1 is part of the permitting. They had to do a historical analysis to prove the structure and use predates the DEP's jurisdiction. In order to prove this they utilized aerial photographs dating back to 1941 to 2002. The deck was in existence in the 1950's and predated the coastal program. The boat slips were also part of the permitting. The mooring area serves as a temporary docking facility for use by the patrons. The Riordan's have agreed to provide a public access component on site as required by DEP.

Mr. Baylinson indicated that the issue with the neighbors in regards to the fence has been resolved. They are not going to install the shutters that were also requested by Mr. & Mrs. Worts.

Solicitor Marcolongo listed the conditions which include the apartment will be restricted to either family members, employees or a COAH unit, no trash or recycling pick up or

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deliveries prior to 9 a.m. with the exception of the Township picking up trash, the windows on the north side of the building will be closed at 11 p.m., there will be a fence

on the north side adjacent to the Worts' property unless prohibited by the DEP, tenants of the apartment will not park on site, there will be no food or beverage service on the deck after midnight, signage will be posted on the docks to evidence private property, the number of seats will be limited to 98.

Mr. Vandergraff, previously sworn, testified that when he worked at Twisties they would bring in extra tables and chairs as needed. There were 2 storage rooms. He stayed in the apartment for 3 seasons during the mid 1960's.

During questioning by Jack Plackter, Esquire, Mr. Vandergraff testified the establishment opened before noon and last call was given at 2:30 a.m. Twisties was open during the week and on the weekends. After the Twist's sold the tavern it was open just enough to keep the liquor license. The apartment did not have heat or air conditioning. When he worked there people would carry their drinks outside to the deck. He is not aware of any overflow parking across the street.

Richard Sutton, 208 S. Commonwealth Avenue, Strathmere, was previously sworn. His aunt and uncle built Twisties. When he was young people would eat clams and drink on the deck. His father was a bartender at Twisties and his mother was a waitress. He addressed the parking issues. He stated that the free parking, boat ramp and the free beach cause the parking problems.

Dale Bonsall, 2116 Commonwealth Avenue, Strathmere, was sworn. At 17 he began going to Twisties. He was a lifeguard at that time. He remembers benches and a table on the deck at that time. There are 10 businesses on the island, 3 of them he feels strongly should be registered in the historical society. He stated that you would have to go to Key West in Florida to find a place like this.

The meeting was closed to the public.

Mr. Kona suggested that any conditions of approval should also be shown on the plan. Mark Gibson, Professional Engineer, previously sworn, testified they plan to keep the 4 existing signs. The plan to relocate the existing 12 sq. ft. freestanding sign 4 or 5 feet so that it is on the applicant's property. Each sign will be added to the plan. At the Board's request there will be 2 informational signs being placed on the pilings. The lighting will be upgraded to current codes. The lights will be shielded so they are not offensive to the adjoining properties. Residential type fixtures will be added along the handicap ramp for safety reasons and also at the additional ingress/egress to the restaurant. Document will be provided showing what exists and what is proposed. The landscape buffer will remain. Mr. Gibson added that the applicants would like to amend the solid vinyl fence to lattice for airflow.

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Mr. Baylinson stated that the fence requested by Mr. & Mrs. Worts' would be added to the plan. The fence will be located on the Worts' property and it will be their responsibility to maintain the fence.

Mr. Gibson agreed to provide proposed grading for the new septic. He also agreed to replace the grass strips along the curb line with concrete. Mr. Kona requested additional zoning information such as parking requirements be included on the first page of the plan.

Mr. Plackter stated the windows on the south side of the property should also be closed at 11 p.m. He feels the outside food and beverage service should stop at 11 p.m. He feels the lattice is not acceptable and would prefer the solid fence as shown on the plan. They would also like the fence to be sound rated since the noise on the deck is a major problem for his client. Mr. Baylinson agreed the fence would be solid as shown on the plan.

The Board was asked for findings of fact in regards to the 2nd floor apartment and the issue of abandonment.

MR. SHAWL – Shore Kids LLC is the owner of the subject property located at 236 Bayview Avenue, Block 841, Lot 9. They are requesting an interpretation from the Board as to whether or not the apartment on the second floor is an abandoned use. The applicant provided photos of the apartment. There was public testimony from 2 residents that have stayed in the apartment. The applicants are willing to limit the occupancy of the apartment to family or employees or to make the apartment into a COAH unit.

MRS. BURGIN – She believes the apartment is grand fathered and not abandoned because of the testimony presented by a former employee.

MR. UNSWORTH – A condition of approval would be that tenants are not permitted to park on site during the summer.

MR. PIERSON – He concurs.

MR. PHIFER – Nothing to add.

MR. YAKOPCIC – He concurs.

MR. KLEPAC – He concurs.

MR. CASACCIO – The applicant presented pictures showing 2 electric meters.

A motion was made by Mr. Unsworth and seconded by Mr. Pierson, to interpret that the 2nd floor apartment use is not abandoned. In favor: Burgin, Klepac, Pierson, Phifer, Unsworth, Shawl, Casaccio.

The applicants were asked for findings of fact on the use variance and site plan.

MR. SHAWL – Shore Kids LLC are the owners of the subject property known as Twisties Tavern. They are requesting a use variance for the expansion of a non-conforming use, bulk variances, parking variance, signage variance along with preliminary and final site plan approval. The purpose of the application is to raise the building to comply with FEMA requirements, construct new bulkhead, dock, and septic system and re-establish the 2nd floor apartment. The use variance is needed for

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renovations to a commercial establishment in a residential zoning district. Testimony has been given that the proposal meets special reasons (d), (i) and (j). Vincent Orlando testified that the application would advance the purposes of the municipal land use

ordinance. New handicap bathrooms and ramp will be added. The structure will be brought up to current building standards and a new septic will be added. There was public testimony regarding noise and parking. The applicant has agreed to restrict the apartment to occupants of the apartment. They have also agreed to a condition there will be no trash or recyclable pickup or deliveries before 9 a.m. The windows on the north side will be closed at 11 p.m. A fence will be installed on the north side on the neighbor's property. Parking for the apartment will not be on site except off-season. There will be no more seats than the number shown on the plan. There will be no food or drink service on the deck after midnight. Signs will be installed on the dock. Testimony was given by several individuals that Twisties is a great establishment and enhances the sense of community and that many generations of patrons have enjoyed going there. Many of the patrons ride their bikes or walk to Twisties. Mr. Michel feels the operation has expanded since 1981. The applicant has agreed to 67 restaurant seats, 16 bar seats and 15 outside seats. The applicant will revise the plan to show the 4 signs, sidewalk, landscaping and grading. The lights will be shielded. The applicant is not addressing storm water runoff since the footprint of the building is not increasing. The building is actually getting smaller over the water.

MRS. BURGIN – The project has been ongoing for 5 years. The upgrades will make the property more aesthetically pleasing. The elevation of the building will meet FEMA standards providing benefits to the public. The only change to the footprint of the building is the elimination of a 1 ft. section to accommodate the bulkhead. The building will be brought up to code. One additional boat slip will be added. A wood deck will replace the paved area between the buildings decreasing the amount of impervious coverage. A permit has been obtained for the new septic system. The side yard setback will increase by 1 ft. by moving the shed toward the south. Mr. Riordan agreed the hours have expanded since 1981. The shed acts as a buffer. The Township approved the increased license area in February 2002. The deck is the same size as it was in 1981. The bar is the same size as it was in 1929. The business is not expanding; therefore it does not need to comply with the parking requirements in the ordinance. A door will be added in the restaurant to meet fire code requirements. Some residents have complained about parking, deliveries, noise, employees parking in front of their houses, loss of privacy and buffering. Part of the building will remain on site during the installation of the new pilings and the other part will be moved off site. Many of the homes on the bay have been raised. The new septic and air conditioning will benefit the neighbors. The fire company has petitioned Township Committee to post no parking signs. Parking is an issue in Strathmere during the summer. She believes the renovations will preserve history. She believes the variances can be granted in compliance with special reasons (a), (d), (g) (i) and (j). She believes the variances can be granted without substantial detriment to the public good and will not substantially impair the intent or purpose of the zoning plan.

MR. PHIFER – As recommended by the engineer, the grass and curb will be removed and paved over.

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MR. UNSWORTH – He concurs. The applicants have made every effort to be good neighbors.

MR. PIERSON – He considers this pre-existing, non-conforming use under NJSA40:55D-7, item 1. The structure will be raised to comply with the FEMA flood requirements as many of the neighbor's have done and a new bulkhead will be installed. Proposed upgrades to the existing structure signify a variance for lot coverage. Under 40:55D2 he believes "e" is appropriate. He believes the applicants have gone out of their way to be a good neighbor. They have had meetings and invited the public in for tours and input into the project. He believes there is not a 3rd use as a marina. He believes the use has been long established as a restaurant and bar. He feels there exists an exceptional situation uniquely affecting this specific property and its structures that allows us to grant the variances.

MR. KLEPAC – He concurs.

MR. CASACCIO – There area is not 100% residential.

A motion was made by Mr. Klepac and seconded by Mr. Pierson, to grant the application with the conditions stated and revisions to the plan requested by Mr. Kona and the standard conditions. In favor: Burgin, Klepac, Phifer, Pierson, Shawl, Unsworth, Casaccio.

2. NICK HOLLAND – BLOCK 567, LOT 17.02 – BA10-09

Application is for a use variance to construct a photovoltaic solar electric generation system at 1851 Route US 9 South, Seaville.

Julius N. Korschak, Esquire, represented the applicant. He stated that the system is ground mounted. The solar panels are not listed as a permitted use in the ordinance. The property is 9.44 acres. The house sits back 700 ft. from Route 9. The solar panels cannot be seen from the road or the neighbor's properties. The system makes no noise. One of the specific purposes of zoning is "n" to promote renewable energy resources.

Robert Blough, 650 W. Arbor Avenue, Vineland, was sworn in along with Nick Holland, 69 Hope Corson Road, Seaville.

Mr. Blough testified that the photo marked as Exhibit A-1 accurately depicts the front of the applicant's house. Exhibit A-2 shows the panels installed behind the house. He testified that the solar panels couldn't be seen from the road or the neighbor's homes. The system generates no noise or odor. The system generates electricity and is sized to reproduce over the period of one year the annual consumption of the house. This system is about 20.24KW. The system is subject to a core grant. Over a 25-year period this system will eliminate about 1 million pounds of carbon dioxide emissions that would otherwise be generated by fossil fuels. This is similar to planting about 79.5 acres of trees.

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There was discussion concerning the wetland buffer on the site.

The meeting was open to the public.

Joe Salvia, 8 Crestview Drive, was sworn in. He asked the exact location of the panels.

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

Solicitor Marcolongo stated that he has reviewed the definition in the ordinance that requires an additional buffer to the wetland line. He believes there has been recent case law that says the Municipality does not have the right to increase a buffer that is set by the State. He feels this section of the ordinance is not applicable.

MR. SHAWL – Nick Holland is the owner of 1851 Route 9, Block 567, Lot 17.02. Mr. Holland is requesting a use variance to allow a photovoltaic solar electric generation system and equipment and shelter. The applicant submitted 2 photos of the residence and the solar panels. A survey by Stephen Martinelli, dated 3-9-09 was submitted along with a separate sheet of paper showing the location of the panels on site.

MRS. BURGIN – The property is 9.4 acres and is located in a residential zone. The panels cannot be placed on the roof due to the design of the roof. There was a question by a resident inside of 200 ft. She feels the variance can be granted under special reasons (a), (e), (j) and (n). She believes the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning plan or ordinance.

A motion was made by Mr. Unsworth and seconded by Mrs. Burgin, to grant the use variance with the standard conditions. In favor: Burgin, Klepac, Phifer, Pierson, Shawl, Unsworth, Casaccio.

ADJOURNMENT

A motion to adjourn the meeting was made by Mr. Pierson, seconded by Mrs. Burgin, and approved. The meeting was adjourned at 10:30 p.m.

Submitted by,

Shelley Lea
Zoning Officer