

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
FEBRUARY 5, 2009

The regular meeting of the Upper Township Zoning Board of Adjustment was held at 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, Jeffrey Pierson, Andrew Shawl, Matthew Unsworth, Lynn Petrozza, Kenneth Yakopcic, Paul Casaccio.

Absent: Christopher Phifer.

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

SWEAR IN BOARD PROFESSIONALS

APPROVAL OF THE JANUARY 8, 2009 MEETING MINUTES

A motion was made by Mr. Shawl and seconded by Mr. Unsworth, to approve the minutes. Abstain: Pierson, Unsworth.

APPLICATIONS

1. JOHN AND DORIS MARIE ROSE – BLOCK 451, LOT 38 – BA04-09

Applicants are requesting a front yard setback variance to construct a single-family dwelling at 100 Perry Road, Petersburg.

Andrew Shawl did not participate in discussion and voting on this application.

John Rose, 100 Perry Road, Petersburg, New Jersey was sworn along with Paul Rixon of Fox and Fox Builders and Rixon Real Estate. Vincent Orlando, Professional Engineer, was also sworn.

Mr. Rixon testified the applicant's home was destroyed by fire in June of 2008. The applicants would like to place a new modular home on the existing basement. The Pineland Village zoning district requires a 70 ft. front yard setback and the applicants propose 55 ft.

Mr. Orlando testified that EDA prepared a septic plan for the applicant. He stated that the proposed location of the single-family dwelling is appropriate since the property is designed for residential development. They will utilize an existing foundation, which will help to preserve the trees on the site. He believes there is no substantial detriment to the public good and there is no detriment to the zone plan or ordinance since this is a pre-existing non-conforming condition and will not be exasperated in any way.

Mr. Orlando addressed the 2 boats on site and the in-ground swimming pool. The applicants have agreed to remove the boats prior to the issuance of a Certificate of Occupancy. The swimming pool will be secured with safety fencing and will be filled in within 1 year.

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

MR. UNSWORTH – John and Doris Marie Rose are the owners of 100 Perry Road in Petersburg. They are requesting a front yard setback variance to allow 55 ft. where 70 ft. is required. Their house was destroyed by a fire. They are asking to locate a new modular home on the existing foundation. There will not be any trees removed from the site. Approvals for a new septic system have been obtained. The boats currently on the site will be removed prior to a CO. The in-ground pool will be secured with safety fencing and will be filled in within 1 year. He sees no reason why the application could not be granted. He sees no detriment to the public good.

MR. PIERSON – The application conforms to c2(a).

MR. KLEPAC – He believes this is a hardship for the property owners.

MRS. BURGIN- She believes the application can be approved without any substantial detriment to the public good and without impairing the intent and purpose of the zoning law. The application complies with NJS40:55D-2(e) and (g). She believes open space will be provided by not removing any trees.

MS. PETROZZA – She concurs.

MR. CASACCIO – He concurs. There was no public comment.

A motion was made by Mr. Pierson and seconded by Mr. Klepac, to approve the application with the standard conditions, the boats must be removed from the property prior to obtaining a Certificate of Occupancy and the swimming pool must be secured with a safety fence and filled in within one year. In favor: Burgin, Klepac, Pierson, Shawl, Unsworth, Petrozza, Yakopcic, Casaccio.

2. SHORE KIDS LTD T/A TWISTIES TAVERN – BLOCK 841, LOT 9 – BA20-08

Application is for a use variance for expansion of a non-conforming use, variance for lot depth, maximum impervious coverage, front and rear yard setbacks, maximum building coverage and site plan to raise the building to comply with FEMA requirements, renovate building to include new bulkhead, docks and septic system, re-establish the existing

second floor apartment along with other site improvements at 236 Bayview Drive in Strathmere. The existing shed on site requires variances for distance to other buildings, side and rear yard setbacks and building coverage.

Solicitor Marcolongo announced that his stepdaughter has worked at Twisties Tavern as a bartender for the past 2 seasons. Both Mr. Baylinson and Mr. Plackter stated on the record that they had no objection.

Christopher Baylinson, Esquire, represented the applicants. He stated that the applicants are requesting site plan approval and variances to undertake a complete renovation of the existing Twisties Tavern. This has been an ongoing project for 5 years. The property will be upgraded for both aesthetics and safety for the benefit of the health, safety and welfare of the public. The property currently has a 1st floor elevation of 7.2. They propose to bring the entire structure and storage shed up to elevation 11.2 to meet FEMA standards. The structure would be made handicap accessible by adding a ramp and new handicap accessible bathrooms. Other internal improvements include a renovated kitchen and interior storage.

Mr. Baylinson stressed that the building would not be made any bigger. The number of seats will not be increased. The only change to the footprint is that a 1 ft. section in the middle of the building would be eliminated to make room for the new bulkhead.

Mr. Baylinson stated that the applicants have always intended to use the existing 2nd floor apartment. The apartment would be occupied by an employee or family member. If that doesn't work out they would allow the Township to use it toward their COAH obligation.

Mr. Baylinson stated that a use variance is needed since the tavern is a non-conforming use in a Resort Residential zone.

Gary Riordan, 1 E. Seacliff Avenue, Strathmere was sworn in along with Mark J. Gibson, 522 Sea Isle Blvd, Ocean View, NJ; Vincent Orlando, 5 Cambridge Drive, Greenfield, NJ; Robert Green, 1512 Atkinson Avenue, Somers Point; Daniel Scott Mascione, 1409 New Road, Northfield, NJ.

Mr. Mascione, Licensed Architect, gave his background. The original plan was to raise the front half of the building to comply with the flood elevations. He explained the proposed changes to the interior of the building. Two feet will be added to the height in the front of the building to allow for the ductwork. They propose a handicap ramp to allow access to the rear of the building. The building will be brought up to code as far as electric, plumbing, fire alarms, etc. The access stairs to the apartment would be relocated and the roofline slightly altered and dormers would be added to provide more room. The existing shed will be moved 1 ft. away from the bay and raised to flood elevation.

Mr. Kona suggested the applicant amend the plans so it is clear that the building is only being raised to FEMA. He asked about the posted occupancy for the building.

Gary Riordan testified that he is the owner of the property along with his wife. His father transferred the property to him in June 2000. His father owned the real estate since 1971 and the liquor license in 1978. He gave the Board a brief history of the property. He feels the property is a local landmark. The property has been used as a restaurant and bar since 1929.

Mr. Riordan stated the building is old and in need of upgrade. The foundation needs a lot of attention. They have obtained permits from the Army Corp of Engineers, DEP and Cape May County Dept. of Health. They considered taking the building down and replacing it with a new building but decided not to since so many of the patrons like it the way it is now. The old asbestos materials will be replaced with new siding the same color to minimize the impact of any changes. This is probably one of few taverns over the water in its original condition still in existence.

Mr. Riordan testified that during a full moon high tide the water is up the driveway and on occasion the water will lap at the floor joists as shown on Exhibit A-5 taken on 1/8/09. At mid tide the building is about 4 ft. from entering the building as shown in A-6. The renovations include replacing the pilings, bulkhead and deck all in the same configuration. They have had to do repairs to the pilings because of the water and ice. This year they replaced 3 deteriorated pilings. Most of their neighbors have elevated their buildings to flood elevation. They propose to add handicap accessibility and upgrade all utilities to comply with COAH.

Mr. Riordan testified there are 83 seats in the restaurant and 15 on the deck. This total will not change, however since the bathrooms are being relocated they will change the floor plan and traffic area. The size of the deck will not be changed.

Mr. Riordan stated they cater primarily to families. The business is seasonal and they are open Mother's Day weekend and close Columbus Day weekend. They are normally closed on Tuesdays. The establishment is open at noon and closes at 11 or 12 on the weekdays and last call is given at 1:30 a.m. on the weekends. There is no proposed change to the hours of operations or the days.

The shed is currently used for dry storage of beer and a walk in cooler and ice machine. An elevated walkway between the building and storage shed will be added so that it is on the same level. There will be no tables on the walkway. Mr. Kona stressed that the occupancy needs to be established.

Mr. Riordan stated that he reached out to the neighbors to let them know what they are proposing. He conducted a number of tours of the restaurant and attended a meeting to answer questions. He did this since residents had the misconception that they were expanding the deck area over the water. He sent letters dated 12/17/08 to let everyone know what they proposed.

Mr. Riordan stated they pay a private company to remove the trash and recycling from site. The septic is being upgraded as part of the renovations. Prior to the notices being sent out about the project he did not receive complaints. After the letters were sent he received comments about noise.

Mr. Riordan agrees to use the apartment for an employee or family member only or designating it to be used for a COAH unit. They are adding 1 additional boat slip. The slips are solely for customers. There is no entertainment proposed outside. At the request of a neighbor they close the windows in the dining area on the north side by 11:00 p.m. and the bar area at midnight.

Vincent Orlando, Licensed Professional Engineer, Planner and Architect, referred to the zoning schedule on the plan prepared by Gibson Associates. The mixed-use restaurant with an apartment above is not a permitted use in the RR zone. His office was involved in securing the necessary permits to provide a disposal field. The disposal field would be raised to conform to the water quality standards. The parking is not being changed as part of the application. To decrease the amount of impervious coverage the paved area between the buildings will be replaced with a raised wood deck. The bulkhead is being increased from elevation 4.5 to elevation 8. He reviewed the existing and proposed setbacks as shown on the zoning schedule. The existing freestanding sign will be relocated to provide space for the handicap ramp. The sign will be removed from the right of way. The shed will be shifted to the south 1 ft. and elevated. By moving the shed to the south 1 ft. the side yard setback will be increased and more conforming. There would be 3 ft between the buildings.

Mr. Orlando believes there are 5 purposes of zoning that the Board could find as a fact that advance the purpose of zoning such as 40:55D (a), (b), (d), (g) and (i). He believes the variances can be granted without substantial detriment to the public good and without substantially impairing the purpose of the zone plan since the building footprint is not being changed and the facility has been there many years and is a pre-existing non-conforming condition that is not being exasperated by the application. He feels there will be no detriment to the public good since the facility has existed in this location since 1929 and the neighborhood has grown up around it. He believes the site can continue to handle the present use with the modifications proposed since there will be no negative impact. The applicants agree to replace the sidewalks and curbs.

Mr. Riordan stated that the septic is pumped about 4 times a week in the summer. Mr. Orlando stated that the new septic is designed to meet the standards and also incorporates the apartment.

Solicitor Marcolongo commented that if the Board interprets the apartment is grandfathered there will be no need for any additional parking.

Mr. Kona requested that the plan show that the septic being raised will have no adverse impact on the neighbors. He also requested that it be clarified that the raised deck and the deck with the seats will be the same elevation.

Randy Delserro, Warren, New Jersey, was sworn. He is the owner of 5 W. Vincent Avenue. He is concerned about fire trucks being able to get down the street. He questioned the occupancy of the building. Since he will be moving to this address shortly he is concerned about noise. He also has concerns about the noise being generated from the proposed air conditioners.

Walter McCormick, 309 S. Bayview Avenue, was sworn. He feels that parking is needed for the apartment. He feels the application will create additional traffic.

Michael Mazeo, 308 Bayview Drive, was sworn. He concurs with Mr. McCormick. He added that the Twisties that exists now is not the same as it was. He stated there are delivery trucks at the site all day that were not there before. He feels the parking is the biggest problem. He referred to an incident in front of the restaurant involving the police.

James McNally, 300 S. Bayview Drive, was sworn. He concurs with Mr. Mazeo. He has lived at this address since 2004. He discussed the delivery trucks and the noise made from the dumping of bottles. His commented that the employees of Twistie's park in front of his house everyday. He stated that the noise at night is unbelievable. He is disgusted that he pays so much in taxes and has to hear the noise every time that he is there. He discussed the deed from 1929. The 5 photos submitted were marked as P-1, P-2, P-3, P-4, P-5. Exhibit P-6 and P-7 show where there was a fire started on his property by a smoker at the outside dining area.

Patricia Worts Erickson, 232 S. Bayview Drive, was sworn. She submitted 2 photos showing the septic that were marked as P-8 and P-9. Her family purchased their home in 1973. She is most upset about the loss of their privacy. She is concerned about the noise from the bar. She stated they have to deal with the smell of their cesspool. She stated the handicap ramp will be very close to their property line and patrons will have to access the ramp by walking in front of her home. She feels a 6 ft. or 8 ft. privacy fence would help.

Ken Weaver, 212 S. Bayview Drive, was sworn. He had concerns about the changes until Mr. Riordan explained the plan in detail. Mr. Riordan has agreed to close the windows by 11 p.m. He would like this made a condition of approval. He stated that parking was a problem before Twisties was even open. His problems are with the early morning collection of bottles and cans and septic pumping. He would like this restricted until after 9 a.m. He hopes the new deck will reduce loitering. After touring the building he believes the building is in need of refurbishing. As long as the capacity is not increased, windows closed by 11 and the recycling collected later, he would be delighted to see Twistie's elevated and refurbished. A photo from his deck looking toward Twisties was marked P-10.

Mary Lynn Finelli, part owner of 300 S. Bayview Drive, was sworn. She asked where the building would be moved to while they were installing the pilings. She would like to have a handicap parking space in front of her home for her mother. She had questions in regards to the liquor license and amount of parking needed.

Richard Suttung, 208 S. Commonwealth Avenue, was sworn. He feels the applicants run a good establishment. He believes the noise is not like portrayed. He thinks that parking is a bigger problem during the daytime on the weekends when people are going to the free beach. He stated that his aunt and uncle built the bar in 1929. He referred to a photograph from the 1950's and another from before 1941. He is in support of the project. The photos were marked as Exhibits A-10 and A-11.

Joan DiFiore, 205 Bayview Drive, was sworn. She concurs with Mr. Weaver and Mr. Suttung. She has been a summer resident of Strathmere for 55 years. She stated that people park in front of her house but this is not a problem since she has a driveway. She feels Twisties is a great place and 4 generations of her family go there now. She supports the application.

Mark Goehring, owner of 5103 West Avenue, Ocean City, New Jersey, was sworn. He has been going to Twisties since 2000. His family goes to Twisties for lunch by boat or bicycles. He stated that parking is also an issue in the summer everywhere. He feels Twisties is a great family place and dinner place.

Alice Garrity, Sherman Road, Strathmere, was sworn. She stated that 3 of her 4 daughters have worked at Twisties. She loves the fact that they employ local teenagers. She stated that parking is a problem on her street also. She feels the owners are trying to improve the quality of Twisties for their patrons. She is in favor of the proposed upgrades to Twisties.

Ralph Durstein, 647 West Avenue, Ocean City, was sworn. He drove from his home in Wilmington, Delaware, to support the application. He has been going to Twisties for several years. He has been there several times in the evening and indicated that the noise from the tavern stays inside. He stated this is a family type atmosphere that should be preserved.

Joseph Cimino, 312 S. Bayview Drive, Strathmere, was sworn. He stated this is a nice family place. It would be nice if it Twisties were handicap accessible. He has no problem with the application.

Joan Naughton, Ocean View Mobile Home Park, Strathmere, was sworn. She and her family have been coming to Strathmere for 9 years. They are patrons of Twisties. They have never found Twisties to be overly noisy. They have never had problems finding parking on the street.

Solicitor Marcolongo listed the exhibits that have been submitted by Mr. Baylinson. Exhibit A-1 is an existing floor plan by Daniel Scott Mascione, dated 10/20/08, A-2 floor plans and elevations plan by Daniel Scott Mascione, dated 10/20/08. Exhibit A-3 is a plot plan prepared by Gibson Associates, last revised 8/27/08 and A-4 is a new dock and bulkhead plan by R.D. Green Engineering, last revised 8/26/08. Exhibits A-5 and A-6 are photographs of Twisties dated January 8, 2009. A-7 is an aerial photograph and A-8 and A-9 photos are photographs.

Chairman Casaccio announced the application would be continued to March 12, 2009 at 7:30 p.m.

RESOLUTIONS

1. CRAIG SCHWEMMER – BLOCK 18, LOTS 1 THROUGH 4 – BA27-08

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

2. LEONARD AND CAROL LEE ECKMAN – BLOCK 824, LOT 5 – BA28-08

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

3. MEETING DATES FOR 2009

A motion to adopt the resolutions was made by Mr. Unsworth, seconded by Mrs. Burgin, and approved.

BILLS

A motion to approve the bills was made by Mr. Yakopcic, seconded by Mr. Pierson, and approved.

Submitted by,

Shelley Lea