

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
MARCH 12, 2009

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.

**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, Paul Casaccio.

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

**SWEAR IN BOARD PROFESSIONALS**

**APPROVAL OF THE FEBRUARY 12, 2009 MEETING MINUTES**

A motion to approve the minutes as presented was made by Mr. Pierson, seconded by Mr. Klepac, and approved. Abstain: Phifer.

**TABLED APPLICATIONS**

Chairman Casaccio announced the application for Stewart and Marion Segin, Block 324, Lots 25-30 was not listed on the agenda and will not be heard at this meeting. The applicant has mailed certified notices and published a notice in the newspaper. This application will be listed on the April 2, 2009 meeting agenda. No further notice will be required.

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

This is a 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 to flood elevation, construct a handicap ramp, re-establish use of a one bedroom apartment and relocate shed at 236 Bayview Drive, Strathmere.

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Christopher Baylinson, Esquire, represented the applicants.

Chairman Casaccio announced that Christopher Phifer has listened to the tape recordings of the previous meeting and has signed a certificate.

The meeting was open to the public.

Jessica Weaver, 212 Bayview Drive, Strathmere, was sworn. She lives 3 doors to the north of Twisties. She feels the parking and noise complaints have no bearing on the petition to raise Twisties. The business will continue to operate whether they are approved or not. She feels that raising the building and renovating the inside will not add to the noise. Many of the residents along the bay have raised their homes to protect their investment. She does not want to think about what Twisties would be like if it were run by an absentee owner or food chain. She agrees with the comments made by her husband, Kenneth Weaver, at the previous meeting.

Robert Cordrey, 300 Commonwealth Avenue, was sworn. He agrees with Mrs. Weaver. He has lived at this address for 22 years and thinks Twisties is a good neighbor. The property is kept clean, tidy and relatively noise free. He is in favor of the application.

Jane Evans, 232 Bayview Drive, was sworn. Her parents have owned this property since 1976. She asked about adding a buffer to separate the commercial from the residential uses. Her biggest concern is privacy.

Regina Zeccardi, 912 S. Bayview Drive, was sworn. She lives at this address year round. She has owned the property for 25 years. She also owns 916 S. Bayview Drive, which is a seasonal residence. She stated that cars and trailers are always parked along the road. This does not bother her since it is to be expected of a shore community. She is happy that her family will be in a safer environment when at Twisties Tavern.

Joseph Marshall, 309 N. Commonwealth Avenue, was sworn. He has been a property owner in Strathmere for 15 years. He feels that Twisties is a true Strathmere landmark. They take their family there since it is a family friendly restaurant. He feels they are not asking for much, only to upgrade the property. The applicants employ many residents of Strathmere. He supports the application.

John Monaghan, 400 N. Commonwealth Avenue, was sworn. He enjoys going to Twisties with his grandchildren. He does not believe this is a loud bar. He feels Twisties is an asset to Strathmere. He is in favor of the application.

Wendy Dougherty, 34 E. Whittier Avenue, was sworn. She is in favor of the application. She was surprised to hear the testimony of the neighbors, of their frustration of living next to Twisties since the business has been there a very long time. She feels that Twisties is a landmark and a great place to eat, drink and be merry. It is historic and nostalgic. The Riordan's have made every effort to be good neighbors. The proposed

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improvements will not inconvenience the neighborhood but rather contain the noise and the patrons. She feels that rowdy visitors, trash in the streets and empty beer containers

come with living in a resort town. She is struck by the extreme effort being made by the applicant to maintain the integrity of the structure. She feels the new septic and air conditioning will be a benefit to the neighbors.

Greg Bennett, 21 E. Winthrop Avenue, was sworn. He concurs with the testimony given by Mrs. Dougherty. He is a regular at Twisties and good friends with the applicants. He is in favor of the application mostly because of the preservation of history. He feels the history of Strathmere is rapidly disappearing. As a member of the fire company, they have petitioned the Township Committee to post designated no parking signs for the public's safety. This has created parking problems for everyone. He stated that parking is an issue all over town during the summer.

Debbie Vandergrift, 9 S. Commonwealth Avenue, was sworn. She is a life long resident of Strathmere. She feels that Twisties is part of the history of Strathmere. She stated that new residents immediately want to make changes and complain about things that have been there. She feels that if you buy a house next to a bar then your going to have to live next to a bar. She feels the changes will be an improvement.

Charles Vandergrift, 9 S. Commonwealth Avenue, was sworn. He testified that he worked at Twisties as a young man. While working at Twisties he lived rent free in the second floor apartment for 5 summers. He feels that Twisties is good for the town. When he worked there it was open 7 days a week from 11 a.m. until 3 a.m.

Stephen Martinelli, 1923 Tuckahoe Road, was sworn. He has lived in Upper Township for 19 years. He has frequented Strathmere since he was born. He is a patron of Twisties. He feels Twisties is a great place and supports the application.

Larry Curran, 401 S. Commonwealth Avenue, was sworn. He lives one block from Twisties. He has lived there since 1994. He frequents Twisties and finds the business a pleasure to go to. He is an owner of Grace Curran Family Real Estate in Strathmere. He feels the improvements to the site are vital to the community. He is in favor of preserving Twisties. He is in favor of the application.

Jack Plackter, Esquire, represented James McNally, 300 Bayview Drive, Randy Delsarro, 5 Vincent Avenue and Michael Mazeo, 308 Bayview Avenue.

Mr. Plackter cross-examined Gary Riordan, previously sworn. Mr. Riordan testified that he is a member of the planning board. He further testified this is a pre-existing non-conforming use that dates back to at least 1929. The primary purpose of the application is to conform to FEMA requirements.

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Mr. Plackter submitted a copy of Township of Upper Resolution No. 62-1981 that was marked P-11. Copies of photographs taken from the Twisties Tavern Website were marked P-12, P-13, P-14 and P-15. A history of Twisties Tavern from the website was

marked P-16. A copy of a Township Committee Resolution No. 71-3-2002 was marked P-17.

Mr. Riordan testified there are currently a total of 98 seats, 83 seats in the restaurant counting the bar and 15 seats on the outside deck.

Mr. Riordan testified that in 1981 there were picnic tables on the outside deck. He does not know what percentage of the patrons walk or ride bicycles to the tavern. There was a proposal at one time to utilize a lot across the street for additional parking, however it was sold as part of his father's estate. He agrees the hours and days of operation have expanded since 1981. He stated there were never any comments in regards to noise until notices were sent to the property owners. They intend to have the recycle containers and trash bins picked up after 9 a.m. They do not serve cans in the establishment and are very limited in the selections of beer that they carry. They find bottles that they don't even sell but certain people think they are from the tavern. He feels the existing shed behind the dumpster acts as a buffer from the neighbor along with the fence.

Mr. Riordan explained that the description of the licensed area was unclear and how they asked Township Committee to expand the license area to include the deck. This was approved in February 2002. Shortly after they discovered the upper deck area had been licensed all along. The deck was never enlarged and was the same size in 1981. They propose to restrict deliveries to the tavern until 9 a.m. As requested he examined exhibit P-15. He testified they hire a DJ once a year to perform at their Halloween party. He also reviewed P-17, a resolution from 2002 where the Township allowed the liquor license to be expanded to the outside deck. Mr. Plackter stated a condition of this approval was for the applicant to obtain approval from the appropriate board. Mr. Riordan stated that the archive records at Township Hall proved the deck area was already licensed and board approval was not needed. A letter was sent to the Township Solicitor indicating that zoning board approval was not required. There was no response from the Solicitor.

Mr. Riordan testified that the size of the bar is identical to the way it was in 1929. They utilize the original kitchen and the kitchen that used to be part of the residence. There are 7 parking spaces in the front and 4 boat slips. They are not required to conform to the required number of spaces in the ordinance since they are not expanding the business.

In answering questions from Mr. Baylinson, Mr. Riordan testified that the hours of operation have fluctuated over the years. Many years they were open all summer and on weekends as well as times when there were limited hours of operation. At one time they proposed to expand the area of the outside deck on the bay side of the building. This request was submitted to Township Committee for their approval. They received

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approval from Township Committee to license the expanded deck, however the deck was never built.

Mr. Riordan stated that they are installing a door at the north side of the building as a fire code requirement.

Mr. Baylinson stated they agree to a condition that all pick up and deliveries must be after 9 a.m. The Township picks up the cardboard and they cannot control the time of pick up. Solicitor Marcolongo asked if a fence could be installed along the common property line of the adjacent property. Mr. Baylinson responded they would need to modify their CAFRA permit. Mr. Kona feels it would be a good idea for the applicants to talk to the adjoining property owners about possibly erecting a fence.

Mr. Plackter stated that Mr. Delserro is the owner of a vacant lot. Mr. Mazeo lives at his residence full time in the summer. Mr. McNally rents his property when he is not living there. He asked that the applicant limit the hours the deck is open since it is very close to the property line. Mr. Baylinson agreed to stop service on the outside deck by midnight.

There was a short recess at this time.

Timothy Michel, 2168 River Road, Egg Harbor, New Jersey, was sworn. He is a licensed professional planner. He stated that in conjunction with Exhibit P-11 there was a plan on file by Clarence DeVaul, dated March 3, 1980. He submitted this plan on a board along with the proposed plan that was marked as P-18. In comparing the old plan with the current plan he finds that the restaurant area expands since they are moving the restrooms. The deck on the current plan is not shown on the plan from 1981. The new plan proposes to make the kitchen area 3 times larger than it is now. He feels the new plan increases the ability to prepare and serve food. He stated that the restaurant seating capacity is expanding. He feels this is a significant expansion of a previously approved operation. The applicants have not expanded the size of the building, however they have made internal changes including the former storage areas are being made into office and restaurant areas.

Mr. Michel testified there is not sufficient parking. He stated there are 32 parking spaces needed. His clients have experienced conditions not conducive to the residential living environment such as the inability to sleep at night even with the windows closed and air conditioning on. There is also the disturbance of the trash and recyclables and vehicles. He feels this is a disruption of the residential life style in this area and does not conform to the purpose of the RR zone.

Mr. Michel feels the Board should impose some buffering requirements such as landscaping or fencing. He feels there is ample space inside the building for storing trash and refuse to reduce the disturbance to the neighbors. He stated the commercial shed is not a permitted use. He stated the multiple uses on one property should be characterized

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independently and seek approvals. He has not been able to establish that the marina existed in 1981. He believes the increase in seating since 1981 should be considered an expansion of the non-conforming use. He feels that limiting the number of seats and the hours would be very rewarding. He suggests prohibiting any sound systems on the

outside of the building. At the request of Solicitor Marcolongo, Mr. Michel read the public notice into the record. He listed some of additional items that he feels should have been included in the notice. Solicitor Marcolongo stated that he believes the notice is sufficient.

Mr. Michel believes the proposal does not satisfy the public health, safety, morals and general welfare nor encourages the location and design and transportation routes that promote free flow of traffic and parking. He feels that the expansion is not well suited for this particular area since this is a 60% increase in the amount of seating and does not have the required parking. He feels that granting the application is not consistent with the purpose of the zone. He believes the variances cannot be granted without substantial detriment to the public good or zoning plan or ordinance since the adjacent neighbors are experiencing problems.

Solicitor Marcolongo agreed with Mr. Unsworth's interpretation of the 1981 resolution that the Township Committee reverses the Zoning Board of Adjustments requirement that Twisties could not operate as a tavern since it is a pre-existing, non-conforming use. The condition of 61 seats was not established in this resolution.

Mr. Plackter stated that none of his clients owned their properties in 1981. Mr. Michel believes that additional property could be obtained for off site parking. He feels that parking should be made a condition. He feels that a solid wall would be the best buffer.

Mr. Kona requested that Vincent Orlando, PE, be present at the next hearing to describe the site plan elements on the plan.

Mr. Vandergrift testified that he is familiar with Twisties premises back in the mid 1960's. The configuration of the property has not changed since then. At that time it was a full service restaurant. He worked at Twisties for 5 years. He began working in the kitchen as a dishwasher, then chef and then the head chef. He estimates that at busy times they probably served well over 100. There was no problem with the zoning office or anyone else in regards to the number of seats or meals served. He is not aware of any land in the area that could be used for parking. Other dining establishments in Strathmere utilize the road for parking when there parking areas are full.

A special meeting was scheduled on April 6, 2009 at 7:30 p.m. Shore Kids LLC will be listed first on that agenda.

**TABLED APPLICATIONS**

1. SEAN & ELIZABETH CONNELL – BLOCK 348, LOT 93 – BA03-09

2. KRISTINA WRIGHT – BLOCK 348, LOT 84 – BA01-09
3. MARK KABBEKO – BLOCK 732, LOTS 4 & 5.01 – BA02-09

The applications listed above will be placed on the April 2, 2009 meeting agenda. The applicants have agreed to waive the tolling of the time. There will be no further notice.

### **RESOLUTIONS**

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

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

### **BILLS**

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

### **ADJOURNMENT**

The meeting was adjourned at 10:50 p.m.

Submitted by,

Shelley Lea  
Zoning Officer