

**UPPER TOWNSHIP PLANNING BOARD  
MEETING MINUTES  
NOVEMBER 20, 2014**

The regular meeting of the Upper Township Planning Board 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: William Brown, Michael Endicott, Joseph Harney, Cynthia Harrison, Anthony Inserra, Ted Kingston, Hobart Young and James Kelly.

Absent: Daniel Bready and Georgette Costello.

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

**APPROVAL OF THE SEPTEMBER 18, 2014 MEETING MINUTES**

A motion to adopt the minutes was made by Mr. Harrison and approved. Abstain: Brown and Harney.

**SWEAR IN PAUL DIETRICH**

**APPLICATIONS**

1. MICHAEL NACHTIGALL – BLOCK 730, LOTS 23 THROUGH 26 – PB09-14

Applicant is requesting a site plan waiver and variance for a temporary shed at 1 Roosevelt Boulevard in Marmora.

Mr. Endicott stepped down during this application.

Michael Nachtigall, 7 Orbit Drive, Cape May Court House, was sworn. Mr. Nachtigall testified he wants to sell Christmas trees at this location. He proposes to install a 6 ft. high temporary fence and a temporary shed. He also proposes to sell flowers in the spring. He proposes to stay open from 8:30 a.m. until 10 p.m.

Solicitor Marcolongo stated that a variance is needed for the accessory shed since there is not a principal structure. There will be string lights on the trees and there would not be any flood lights.

Mr. Harney stated that the lease attached to the application is only valid until December 31, 2014. He feels that discussing the sale of flowers in the spring is not appropriate.

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

MR. BROWN – This is a request for a variance for a temporary chain link fence and 12 x 20 shed for the display and sale of Christmas trees and Christmas items. This will terminate as of December 31, 2014.

MR. YOUNG – The trees may not be outside the designated area shown on the plan. The site triangles must be kept open and the parking spaces maintained. He finds the application meets the requirements for a site plan waiver and has no problem with the fencing as a temporary use.

MR. HARNEY – Michael Nachtigall is the applicant. The property is located at Block 730, Lots 23 through 26 located at 1 Roosevelt Boulevard in Marmora. The lot is 180 ft. x 90 ft. The owner of record is Grace Oil Company. The applicant has a lease until December 31<sup>st</sup> He is seeking a variance for the shed only since a 6 ft. high fence is permitted. The hours of operation are 8:30 am until 10 pm. The area will be lit with string lights on the trees. This is a temporary use. There is parking on site.

MR. INSERRA – Nothing to add.

MR. KINGSTON – Nothing to add.

MRS. HARRISON – Banners will be hung on the fence for advertising.

MR. KELLY – There was no public comment.

A motion was made by Mr. Harney and seconded by Mr. Young to grant the applicant with the condition the fence and shed will be removed by December 31, 2014 and any future sales will require that the applicant return to the board with the condition there will be no flood lights, no sales after 10 p.m. and all merchandise will be stored within the fenced area. In favor: Brown, Harney, Harrison, Inserra, Kingston, Young and Kelly.

2. DAVID LEVARI – BLOCK 445, LOT 1 – PB06-14

Applicant is requesting a rehearing for clarification of prior resolution PB04-08 at Levari's Seafood and American Grill located at 1291 Route 50 in Petersburg.

Mr. Inserra stepped down during this application due to a conflict of interest and Mr. Endicott rejoined the board.

David Levari, 1 MGM Way, Seaville, was sworn.

Alfred Verderose, Esquire, represented the applicant. Mr. Verderose stated the applicant is present asking for clarification as to whether or not the subject property is in compliance with the approvals granted in 2008.

Mr. Harney asked about a floor plan or survey and if an as built survey was done. Mr. Dietrich explained that Mr. Levari is currently operating without a CO and has not produced an as built survey. He explained that Mr. Levari has been sent a violation notice for expanding his site without site plan approval and some court summons have been issued.

Mr. Dietrich further testified that the plan dated 1-10-2008 by Stephen Martinelli showing a proposed 54' x 7' framed lean to roof and a proposed 13'6" x 12'6" concrete area was presented to the board in 2008. A plan by Stephen Martinelli dated 10-22-2007 was presented to the Township Committee for the liquor license. Mr. Dietrich testified that Mr. Levari was told at the

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Township Committee meeting that because the hatched liquor area is larger it does not grant him site plan approval to make improvements in that area beyond what was approved at the planning board.

Mr. Levari referred to photos of a picnic tables in the rear of the property and stated that this is a continued use. Mr. Dietrich stated that picnic tables are permitted in this area, however Mr. Levari has changed the area shown in the photos by adding stone and gravel, has added a drive aisle and parking in the woods and beyond his property line. He has also added tents that are there permanently as well as sheds without site plan approval.

Mr. Harney stated that he would like the applicant to produce a site plan as required in the ordinance to show what exists on site. Mr. Levari stated that he is operating in a designated drinking area.

Mr. Levari testified that he has improved an area so that the DOT surveyor can get to the overpass. He stated that he has a building permit for a 14 ft. wide lean to and not 7 ft. as shown on the plan dated 1-10-2008. He stated that he never agreed to put a 7 ft. overhang and that there is an error in the transcript. He stated that he is requesting the board to clarify that it was a continued use. He stated that he would be in favor of removing the shed. He stated there is no ordinance that says tents are illegal.

Solicitor Marcolongo stated there is nothing in the ordinance that specifically addresses tents. The zoning board during its last annual report stated included that the planning board should consider modifications to the ordinance to address tents. He believes a tent should be covered under the umbrella of structure. Mr. Vanderose referred to the state definition of a building.

Mr. Levari stated that he is not increasing the floor area by having the tents because everything is in the approved liquor area. He stated there were 12 picnic tables scattered through the woods in 1991. When he purchased the property the tables were still there. At that time he agreed to lessen the impact on the area by reducing the liquor area at the request of the State Police. He stated that he cleaned up the property and took it from a gang related trouble spot into a family restaurant.

Mr. Dietrich stated the area shown on the plan by the septic tanks used to be gravel but is now parking that was never approved. The plan provided to the board in 2008 does not show parking in this area.

Solicitor Marcolongo marked into evidence photos A-4 through A-12 which are blow ups of the photos in the application.

Mr. Young commented that he is familiar with the site prior to the applicant buying it and now and they parked everywhere on site whether it was stone or grass. He referred to the survey showing the dimensions of the concrete pad and framed lean to. He feels it is fair to say the width of the building is more than 7' on the plan.

Mr. Levari stated that trees were cleared when the retention basin was put in and when the overpass was built in 1994. The former owner removed trees to install a new septic. He removed dead trees from the rear of the building. He referred to A-6 and indicated this was used for parking. Mr. Dietrich referred to Exhibit B-1 a photo of the property and aerial photographs

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marked B-2, B-3 and B-4 taken in 2007, 2010 and 2013. The 2007 photo shows the drainage easement being wooded. He stated that the limits of the paving and parking and stone area as well as the clearing of trees is clearly shown. If allowed to continue like this the township becomes liable. He stated that the applicant has extended the clearing and parking past what was shown on the plot plan dated 1-10-2008.

Mr. Young asked if the state has made any complaints. He feels that any expansion onto the state or school property is a separate issue. He stated that the sheds on the property is an architectural enhancement and should not be considered building coverage. Mr. Dietrich stated that the shed and fence required permits but they were never obtained. If the shed increases the impervious coverage a variance is needed.

Mr. Kingston stated there is a big difference in the pictures since 2007. He asked if the tents were part of the approval in 2008. Mr. Levari responded that the tents are inside the approved drinking area. Mr. Levari asked about awnings.

Mr. Harney stated that a variance was previously granted for building coverage. He has questions as to whether the tents increase the building coverage. He feels an as built survey would help clear up the confusion. He sees a big change in the photos between 2007 and now.

Mr. Levari stated that he wants to know if this is a continued use because he bought a bar. He stated that he would remove the shed from the site. The stage is shown on the survey and will not be removed. He will not remove the tents until someone writes that they are illegal. He stated that he will go back to court for the tents and that the board engineer is prejudice. He agreed to remove the parking since there is parking on Tuckahoe Road.

Mr. Dietrich stated that he is not prejudice; he is doing his job in accordance with the ordinance. If the parking is not safe and there is an accident the township is brought into the law suit. Mr. Dietrich agreed that stone is not impervious but when the site is changed and these areas are used for parking site plan approval is needed to determine if it is safe and in compliance.

There was discussion concerning whether or not tents are a structure. Mr. Dietrich stated the tents are interpreted by the zoning officer as structures. The tents should be shown on a plan to determine if they meet the setback requirements. Mr. Levari insisted the tents are in the liquor area and therefore permits are not necessary.

Solicitor Marcolongo marked as A-13 through A-22 additional photographs submitted by the applicant and A-23 an invoice from Robert Brown Tree Service to the Triton Tavern dated March 15, 2008 for removal of 12 dead trees.

Mr. Verderose stated that the applicant would be in favor of removing the stone parking and planting grass. He asked that the board hear the application for site plan waiver at this time. Solicitor Marcolongo stated the application was for clarification and not site plan waiver.

A motion was made by Mr. Harney and seconded by Mrs. Harrison to table the application until the applicant submits adequate information for the board to act upon. In favor: Brown, Harney, Harrison, Kingston, Kelly. Opposed: Endicott and Young.

Solicitor Marcolongo stated that the application has been tabled to obtain additional information. If the applicant chooses he can amend his application to request a site plan approval on additional notice without the necessity of paying additional application fees. Mr. Dietrich added that the location and setback of the tents must be shown. If they do not meet the setbacks a variance must be requested. Drainage calculations would not be needed since the tents are temporary.

There was a short break at this time. Mr. Brown and Mr. Inserra left the meeting.

3. POTENTIAL REVISIONS AND POSSIBLE RECOMMENDATIONS TO TOWNSHIP COMMITTEE FOR AMENDMENTS TO THE UPPER TOWNSHIP ZONING ORDINANCE CHAPTER XIX LAND SUBDIVISION SITE PLAN AND LAND USE ADMINISTRATION AND CHAPTER XX ZONING

Mr. Dietrich briefly reviewed the proposed changes listed in the document dated October 16, 2014 consisting of 8 pages titled Proposed Zoning Ordinance Revisions 2014 for the public. There were questions concerning the new bulk head ordinance that were discussed.

The meeting was open to the public.

James Moore, Esquire, represented James McCallion owner of Block 568, Lot 11 at 40 Butter Road. His client purchased the lot with the intention of developing it commercially. He anticipates submitting his site plan application for the December meeting. He would oppose any change in the zoning of the lot.

Daniel Pashley, owner of Lots 29 and 31, indicated he is fine with the split zoning of the lots. He does not want his lots included in the zone change.

A resident of 80 Butter Road, Block 568, Lot 11, is concerned about runoff at 40 Butter Road. Mr. Dietrich explained the process of the application.

Bertha Field, 1148 South Shore Road, she is concerned about drainage and work being done without permits.

Sandy Smith, 1148 Route US 9 south, she had questions regarding the proposed ordinance revisions.

After a lengthy discussion the board instructed Mr. Dietrich to delete Lot 11.

A motion to adopt Special Resolution 06-2014 was made by Mr. Kingston and seconded by Mr. Healy. In favor: Endicott, Harney, Harrison, Kingston, Young, Kelly.

**PUBLIC PORTION**

**BILLS**

A motion to approve the bills was made by Mr. Harney. seconded by Mrs. Harrison, and approved.

**ADJOURNMENT**

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A motion to adjourn the meeting was made by Mr. Kingston, seconded by Mrs. Harrison, and approved. The meeting was adjourned at 10:23 p.m.

Submitted by,

Shelley Lea