

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
MAY 12, 2011**

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: Ted Klepac, Christopher Phifer, Andrew Shawl, Peter Schuler, Joseph Healy and Jeffrey Pierson.

Absent: Matthew Unsworth, Lynn Petrozza and Paul Casaccio.

Also in attendance were Dean Marcolongo, Board Solicitor; Paul Dietrich, Board Engineer and Patty Smyth, Acting Secretary.

A motion was made by Mr. Shawl and seconded by Mr. Schuler to nominate Jeffrey Pierson as Acting Chairman. Motion carried.

PAUL DIETRICH SWORN

APPLICATIONS

1. RALPH & DEANNA HOLT – BLOCK 652.01, LOT 19 – BA09-11

Applicants are requesting a use variance for expansion of a non-conforming use to extend the hours of operation to 6:30 am until 11:00 pm at Ralph's Bagels, 121 Tuckahoe Road, Marmora.

Ralph and Deanna Holt, 50 Jill Avenue, Marmora, were sworn.

Solicitor Marcolongo reviewed the prior applications concerning this particular property. The applicants are requesting to remove one of the conditions incorporated in Resolution BA23-01 that has been subsequently confirmed specifically regarding the hours of operation to permit them to operate their business from 6:30 am until 11:00 pm. They would ultimately be extending the closing time from 4 pm to 11 pm. This request requires a use variance requiring 5 affirmative votes. The applicants have advised that they will proceed with only 6 board members present. In his opinion the issue regarding res judicata would not prohibit the Board from hearing the request since the applicant has

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT

MAY 12, 2011

PAGE 2 OF 5

never requested changes to the hours of operation. He has no problem with the Board hearing this particular issue on its merits at this time.

Mr. Holt testified that 10 years ago he came before the Board for approval to construct the building. He stated it is becoming harder to operate the business due to the economy. He stated that other businesses located in the commercial zoning districts in the area are allowed to be open as late as they want.

Mr. Holt submitted a package containing 11 pages that was marked as Exhibit A-1. He stated that there are no restrictions in the ordinance for hours of operation except for mining. Solicitor Marcolongo clarified that the Board does not accept letters or petitions as shown on pages 2,3 and 4. He referred to correspondence from Mr. Dietrich to Mr. & Mrs. Holt dated August 11, 2010 and August 20, 2010 regarding whether or not a home occupation exists in that immediate area. Mr. Holt stated that the change in hours would not be a detriment to the neighbors since there is plenty of parking and lighting. He testified that he has never violated the permitted hours and never exceeded 2 pm. He is not sure yet if he will be open until 11 pm/7 days a week but will do what it takes to pay his bills and provide for his family.

Mr. Holt stated that his property is well maintained. He stated that the neighbors are far enough away that they will not be a nuisance. He receives a letter from the Township if a tree dies or the fence falls down. He feels he is treated unfairly since Shop Rite has trees on their property that are dead. If he gets enough business for dinner he will close early to go home to his family. He chose 11 pm since other businesses close at that time.

In response to a question by Mr. Phifer the applicant replied that he does not know when his busy times would be since he is not normally open at night. He has been in business for 15 years and never exceeded 4 pm. The majority of catering they do is done off premises. He stated that the price of flour, gas and other things he uses has gone up.

Mr. Holt stated that he has 3 compressors outside along the Scheck property.

Mr. Dietrich clarified the letters contained in Exhibit A. He investigated a possible home occupation on Wayne Jack's property based on information supplied by Mr. Holt. After speaking to Mr. Jack he concluded that there was no home occupation based on the evidence that he had at that time. In his opinion there is no home occupation. He made a similar investigation regarding Terri Lea. Information supplied by Mrs. Lea indicates that she has watched children in her home before the ordinance was changed so that home occupations were no longer allowed in the residential zoning districts. Therefore Mrs. Lea is considered a pre-existing non-conforming home occupation operating under the home occupation regulations. Mr. Holt feels that in regards to Mrs. Lea's home occupation, Mr. Dietrich over rode the State and County requirements.

The meeting was open to the public.

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT

MAY 12, 2011

PAGE 3 OF 5

Wayne Jack, 115 Tuckahoe Road, Marmora, was sworn. Mr. Jack stated that when Mr. Holt opened his business he knew all of the conditions. Since then Mr. Holt cut the trees without a permit and tried to have the entire block re-zoned so that he could operate his business on the second floor. Mr. Holt has been trying to change the conditions of approval ever since he opened. The applicant's parking lot is 60 ft from his house. He commented that he is not running a business at his house. He stated this is a residential neighborhood and he doesn't want a parking lot open till 11 pm 60 ft from his home.

Keith Jack, 44 Stagecoach Road, Marmora, was sworn. He is opposed to any variance that would create any disturbance to their residential neighborhood. At a previous meeting Mr. Holt testified that his business did not bother the neighbors since most of the neighbors were busy while he was working but now he wants to stay open at night. He feels staying open this late is not good for the neighborhood. He doesn't believe that the economy has anything to do with granting a use variance.

Sally Jack, 44 Stagecoach Road, was sworn. She is opposed to the granting of the requested use variance for the increase in hours because it would be a detriment to the surrounding neighborhood. There would be an increase in noise and lights. The benefits of granting the variance would only benefit the applicant and not the public.

Michelle Jack, 115 Tuckahoe Road, Marmora, was sworn. Before the buffer was cut down in front of their house they were not able to see the lights from the post office, car wash and on the street. Now they can see them all. The trees that the applicant replaced are growing but are not tall enough. She stated that she would also be able to see the applicants lights if the variance is approved. She doesn't believe the vegetation the applicant planted along the sidewalk would prevent someone from parking on the street. She has a difficult time getting out of her driveway safely because of the trucks parking on the side of the road. She will not be able to get out of her driveway at night either if there are still trucks parked along the street. She stated that her husband does not run a business out of their house. She confirmed that she emails the Township every time the fence falls down into her driveway with nails sticking up.

Mr. Dietrich testified that there have been instances when the applicant's fence has blown down. He also testified that the existing buffer conforms to the application granted in 2009.

Mr. Holt testified that the second floor would not be changed and would remain office and storage.

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

MR. SHAWL – Ralph and Deanna Holt have come before the Board requesting an expansion of the hours of operation for their bagel and deli facility located at 121 Tuckahoe Road, Marmora. The applicants have testified that the increase in hours would

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT

MAY 12, 2011

PAGE 4 OF 5

help to keep the business running. The Holts have stated there are no restrictions on the hours of operations on other properties. They testified there would be no detriment to the neighbors. They are not sure what business will be like in the evening and they are not sure they will be open until 11 pm but they want the option of staying open this long. When the Holts received their original approval their hours of operation were the same as they were in their previous location inside of Wayside Village. The hours were not specific to the building although the hours were incorporated as a condition of their approval. The applicants provided testimony that other businesses in Upper Township are open until 11 pm and that allowing them to stay open until 11 pm would contribute to the well being of persons, neighborhoods and communities as a special reason for granting the variance. Four neighbors testified that the hours of operation were limited to 6:30 am until 4 pm along with the buffer and other conditions. The neighbors are not in favor of expanding the hours of operation since it would be a detriment to the intent and purpose of the land use law. There are concerns there would be increased noise and lights if the hours were increased. The original buffer acted as protection from the noise and lights and there is currently less protection. No one outside of 200 ft provided testimony. Based on the testimony that he has heard, the reasons for granting the variances provided by Mr. & Mrs. Holt do not meet the special reasons criteria in the Municipal Land Use Law.

MR. PHIFER – Nothing to add.

MR. SCHULER – He concurs.

MR. KLEPAC – He concurs with the findings.

MR. PIERSON – This is a difficult decision. The property owners are trying to make a living within a residential area by a variance granted several years ago. The applicant is trying to keep his family fed and continue to contribute to the community by donating and being at public events and things like that.

A motion was made by Mr. Shawl and seconded by Mr. Phifer to grant the application for the use variance to expand the non-conforming use specifically to remove the limitation on the hours of operation and permit the applicant to operate from 6:30 am until 11 pm with the restriction on the use of the second floor to continue and the outside parking lot lighting would go off when the business closed even if the business closes prior to 11 pm.

In favor:

KLEPAC - Yes

PHIFER – Yes. This is the hardest decision that he has made in 2 years.

PIERSON – Yes.

SHAWL – No.

SCHULER – Yes. There is a definite concern on the neighbor's part although a person should have the ability to make a living. He hopes this does not get abused in any fashion and that it is not simply a small step in bigger planning.

HEALY – Yes.

BILLS

A motion to pay the bills was made by Mr. Phifer, seconded by Mr. Healy and approved.

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT

MAY 12, 2011

PAGE 5 OF 5

RESOLUTIONS

1. KRISTINA WRIGHT – BLOCK 348, LOT 84.01 – BA08-10

A motion to adopt the resolution was made by Mr. Shawl and seconded by Mr. Schuler. In favor: Klepac, Phifer, Pierson, Shawl, Schuler. Abstain: Healy.

2. ALBERT & PATRICIA DONZANTI – BLOCK 568, LOT 11 – BA03-11

A motion to adopt the resolution was made by Mr. Shawl and seconded by Mr. Healy. In favor: Klepac, Phifer, Shawl, Schuler. Abstain: Healy, Pierson.

3. JOHN WECHSLER – BLOCK 851, LOT 4 – BA05-11

A motion to adopt the resolution was made by Mr. Shawl and seconded by Mr. Klepac. In favor: Klepac, Phifer, Shawl, Schuler. Abstain: Healy, Pierson.

4. MARILYN ROLAND – BLOCK 855, LOT 2 & 2.01 – BA07-11

A motion to adopt the resolution was made by Mr. Shawl and seconded by Mr. Klepac. In favor: Klepac, Phifer, Shawl, Schuler. Abstain: Healy, Pierson.

ADJOURN

A motion to adjourn the meeting was made by Mr. Klepac, seconded by Mr. Schuler, and approved. The meeting was adjourned at 8:54 pm.

Submitted by,

Patricia Smyth
Acting Secretary