

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
MAY 14, 2015**

The regular meeting of the Upper Township Zoning Board of Adjustment was held at the Township Hall, 2100 Tuckahoe Road, Petersburg, New Jersey. The meeting was called to order at 7:30 p.m.

**SUNSHINE ANNOUNCEMENT**

**SALUTE TO THE FLAG**

**ROLL CALL**

Present: Sherrie Lisa Galderisi, Ted Klepac, Alistair Lihou, Lynn Petrozza, Christopher Phifer, Susan Adelizzi, Andrew Shawl, Carol Tutelian, Matthew Unsworth and Paul Casaccio.

Absent: Joseph Healy and Carol Tutelian.

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

**TABLED APPLICATIONS**

1. ADVANTAGE EQUIPMENT SALES LLC AND ATLANTIC CAPE BUILDERS LLC  
BLOCK 600 LOTS 26 AND 30

Julius N. Kenschak was present to request the application be tabled because of the length of the agenda. This application will be heard on June 11, 2015. No further notice is required.

**APPROVAL OF THE APRIL 2, 2015 MEETING MINUTES**

A motion to approve the minutes was made by Mr. Healy, seconded by Ms. Schmidt, and approved. Abstain: Klepac.

**SWEAR IN BOARD PROFESSIONALS**

**APPLICATIONS**

1. SCOTT AND JUDY BEARD – BLOCK 453 LOT 240.18 – BA05-15

Applicants are requesting a use variance to allow a second principal structure on the same lot and a use variance to allow an apartment on the second floor of a proposed detached garage at 6 Thicket Street in Seaville.

Peter Arsenault, owner of 6 Thicket Street, was sworn. Scott Beard, 37 Lawrence Lane, Westampton, NJ and Vincent Orlando, Professional Engineer, were also sworn.

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Mr. Arsenault testified he would like his family to live near him and have his children grow up with their grandparents living nearby. He also wants to be able to them when they get older. He is seeking a D variance to allow an apartment for his in-laws above a proposed detached garage on the same property as his existing house.

Mr. Orlando testified the property owners live in a two story home on the property. They want to construct a detached garage with an apartment for Mrs. Arsenault's parents to live in. The detached garage meets the setback requirements in the R2 zone and could be constructed without variances if it were limited to 20 ft. in height. The variance is only needed for the proposed apartment. Both the second floor apartment and two principal uses on the same lot require D1 variances. The existing single family dwelling is 2,800 sq. ft.

Mr. Orlando testified the applicant is willing to make a condition of approval that only a family member can occupy the apartment. If the apartment were no longer used by family the applicant is willing to make the apartment into a COAH unit. He feels there are special reasons for granting the variances since this would provide low moderate income housing and since Mr. & Mrs. Beard are both senior citizens. He feels the proposed structure fits in with the community. He does not believe that granting the variances would have a detrimental impact on the neighbors or the zoning plan or zoning ordinance. He suggested moving the garage closer to the house to provide room for landscaping along the rear property line. He agreed to plant a row of evergreens approximately 75 ft. with 6 to 8 trees approximately 4 to 6 ft. tall along the rear property line.

The meeting was open to the public.

John Germanio of Belleplain, NJ was sworn. Mr. Germanio testified that he owns the abutting lot in the rear of this lot. He stated that each of the homes in this subdivision must be at least 2,000 sq. ft. He submitted a copy of Resolution SD01-06 that was marked P-1 and a copy of Resolution SD07-06 that was marked P-2. Solicitor Marcolongo stated that the resolution does not include a condition in regards to the size of the homes. Mr. Germanio submitted a copy of a Deed between himself and Cedar Villas dated 10/27/06 containing a deed restriction that any houses constructed shall be over 2,000 sq. ft. of living space. The deed was marked P-3. A deed between Cedar Villas and Peter and Jennifer Arsenault dated 10/22/07 containing the deed restriction was marked P-4. A copy of the Residential Commitment for Title Insurance for the entire subdivision was marked P-5. He would be in favor of expanding the house but not having an apartment in a separate building. He is concerned about the septic and its location. He is not in favor of two houses on one lot. He believes the second building would be a detriment to property values.

Michael McCormick, 11 Thicket Street, was sworn. Mr. McCormick testified that he does not have a problem with what is proposed. He does not believe the structure would have a negative impact on property values.

Tony Urbano, 271 Marshallville Road, was sworn. Mr. Urbano testified that he owns the vacant lot across the street. He is in favor of the application.

The meeting was closed to the public and returned to the board for findings of fact.

MR. SHAWL – Scott and Judy Beard are requesting use variances to construct a 30 ft. x 31 ft. detached garage at 6 Thicket Street in Seaville. The garage would contain a 990 sq. ft. apartment

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that would be used by family. The structure meets the setback requirements; however the building height would not be in compliance if this were considered an accessory structure. Mr. Arsenault would like his family to live close by. The garage apartment is a second principal use on the lot and requires a D variance and special reasons. The applicant is willing to a condition to have family only occupy the structure or make the apartment into a COAH unit. Mr. Orlando testified that special reasons for granting the variance include low moderate income housing, age restricted construction and density. The applicant agreed to construct the garage closer to the house and plant evergreen trees as a buffer. Two property owners within 200 ft. testified they are in favor of the application. He feels this type of development is desirable in our community.

MS. PETROZZA – She agrees with Mr. Shawl. She feels the applicant has provided testimony that relief can be granted without detriment to the public good.

MR. PHIFER – He finds that special reasons c, e and l apply.

MR. UNSWORTH – He concurs.

MS. ADELIZZI-SCHMIDT – She concurs.

MR. LIHOU – He concurs.

A motion was made by Ms. Petrozza and seconded by Ms. Adelizzi-Schmidt, to grant the application with the conditions the apartment would be deed restricted so only blood relatives can occupy the property with a maximum of two persons and cannot be a rental and if at any point the apartment is not being used by blood relatives it would become a deed restricted COAH unit, the plans shall be revised to move the garage 15 ft. closer to Thicket Street and a 75 ft. evergreen row will be created along the rear of the property consisting of 6 to 8 evergreen species 4 to 6 ft. high at the time of planting. In favor: Lihou, Petrozza, Phifer, Schmidt, Shawl, Unsworth, Casaccio.

There was a short break at this time.

2. NINE & STAGECOACH LLC – BLOCK 600 LOTS 22, 23 & 34 – BA03-15

Applicants are requesting a minor subdivision to realign the existing lot lines and a use variance for expansion of a non-conforming use due to the duplexes on the lots located at 1206 Route US 9 South and 135 and 151 Stagecoach Road in Seaville.

Julius N. Korschak, Esquire, represented the applicants. Scott Kirkpatrick, 1808 Richmond Drive, Ocean City and Stephen C. Martinelli, Land Surveyor, were sworn.

Mr. Korschak stated the subdivision would not create any additional lots. The lot lines are being moved so that the lot fronting on Route 9 becomes larger and the two lots on Stagecoach Road become smaller. There are three existing duplexes on the lots that are pre-existing non-conforming requiring a use variance to change the lot size in any way. All the bulk requirements in the TCC zone are being met. The duplex on Route 9 has a non-conforming side yard setback 17.5 ft. where 25 ft. is required, that would not be affected.

Mr. Orlando, Professional Engineer, testified using the plan by Stephen C. Martinelli Land Surveying, dated 1/6/15 and revised 4/9/15. The property is located in the TCC zone where duplexes are not permitted. The intent of the applicant is to develop lot 34 commercially. He testified that the special reason a and e applies to promote population densities and to encourage more efficient use of the land. He feels that granting the variance would not have a negative impact on the neighborhood and would not negatively impair the intent and purpose of the zone plan. There are currently other duplexes on Stagecoach Road with similar lot sizes.

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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. SHAWL – The applicant is the owner of 1206 Route US 9 South and 135 and 151 Stagecoach Road in Marmora also known as Block 600, Lots 22, 23 & 34. The applicant wishes to realign the lot lines. Currently there are three lots, each with its own duplex. Duplexes are not a permitted use in the TCC zone. The lots on Stagecoach Road would become smaller and the lot on Route 9 would become larger. Shifting the lot lines would allow for better development of the Route 9 lot. Mr. Orlando testified that realigning the lot lines would work to establish the proper population density and encourage land development and appropriate development in a very efficient way. Any pre-existing bulk variances would not be exasperated by changing the lot lines. There was no comment from the public.

MS. PETROZZA – She agrees with Mr. Shawl. She feels that special reasons d and m apply.

MR. PHIFER – He feels that moving the lot lines makes perfect sense. The duplex on Route 9 would be eventually be eliminated. He feels that special reasons k and m apply.

MS. ADELIZZI – She concurs.

MR. LIHOU – He concurs.

A motion was made by Mr. Unsworth and seconded by Ms. Petrozza, to approve the application as presented with the standard conditions. In favor: Lihou, Petrozza, Phifer, Schmidt, Shawl, Unsworth and Casaccio.

3. REX SCHUTTE – BLOCK 834 LOT 5 – BA09-15

Applicant is requesting a variance to exceed the permitted building coverage to construct an addition to a single family dwelling at 18 E Sumner Avenue in Strathmere.

Richard Rex Schutte, owner of 18 E. Sumner Avenue, Strathmere and Christopher Halliday, Architect, were sworn.

Mr. Halliday testified the applicant is proposing to add a sunroom addition and a deck to the rear of the existing single story beach cottage as shown on the plans by Halliday Architects, dated 3/24/15 and revised 4/28/15. The house was built by the applicant's family in 1969. The building coverage is currently 28% where 27% is permitted and 32% proposed. The applicant wishes to construct an addition to the first floor rather than add a second floor. The impervious coverage is 5% less than permitted. He feels that the proposed addition would not be a detriment to the public and would not negatively impair the intent and purpose of the zoning plan or zoning ordinance. The side yard setback on the east and the front yard setback are pre-existing non-conforming and would not be affected by the addition. The proposed addition would comply with the side yard setbacks. The addition in the rear would make it easier to see their grandchildren playing in the back yard, allow for better circulation inside the structure and provide a rear access.

Mr. Dietrich stated that the house meets the current flood ordinance. Mr. Halliday testified there is an existing sidewalk on Sumner Road.

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

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MR. SHAWL – Rex Schutte is the owner of 18 E. Sumner Road in Strathmere also known as Lot 5 in Block 834. and is before the board asking for a variance for building coverage. The applicant proposes to add a sunroom and an access to the rear yard. The applicant also proposes a roof deck. The proposed addition would improve circulation inside the house and provide access to the back yard from the house where currently there is no access to the rear yard. The addition would meet the side yard setback. The addition would match the beach style of the cottage. The addition meets the flood requirements. The addition would not impact the neighbors. There was no public comment.

MS. PETROZZA – She agrees with Mr. Shawl.

MR. PHIFER – The proposed addition is in proportion with the size of the lot and matches the neighborhood. He finds the variance could be granted without negative impact to the intent or purpose of the zoning plan or zoning ordinance and without substantial detriment to the public good.

MR. USNORTH – He concurs.

MS. SCHMIDT – She concurs.

MR. LIHOU – He concurs.

A motion was made by Mr. Unsworth and seconded by Ms. Petrozza, to grant the application as proposed with the standard conditions. In favor: Lihou, Petrozza, Phifer, Schmidt, Shawl, Unsworth and Casaccio.

**BILLS**

A motion to pay the bills was made by Mr. Klepac, seconded by Ms. Petrozza, and approved.

**RESOLUTIONS**

1. EQUITY LIFESTYLE PROPERTIES LLC – BLOCK 558, LOTS 17 & 46 – BA07-15

A motion to adopt the resolution was made by Mr. Unsworth, seconded by Ms. Schmidt, and approved.

2. SANDRA J KOENIG – BLOCK 861, LOT 5 – BA02-15

A motion to adopt the resolution was made by Mr. Unsworth, seconded by Ms. Schmidt, and approved.

3. JOHN J QUIGLEY JR. – BLOCK 722, LOT 1 – BA04-15

A motion to adopt the resolution was made by Mr. Unsworth, seconded by Ms. Schmidt, and approved.

4. KURTIS & KEITH WOODROW – BLOCK 558, LOT 30.01 – BA06-15

A motion to adopt the resolution was made by Mr. Unsworth, seconded by Mr. Lihou, and approved.

**APPLICATIONS CONTINUED**

5. RALPH & DEANNA HOLT – BLOCK 652.01 LOT 19 – BA12-15

Applicants are requesting a use variance for expansion of a non-conforming use to permit 20 additional seats on the second floor at Ralph's Bagels, 121 Tuckahoe Road in Marmora.

Chairman Casaccio, Mr. Unsworth and Shelley Lea, left the meeting at this time due to a conflict.

A motion was made by Ms. Adelizzi-Schmidt and seconded by Mr. Phifer, for Andrew Shawl to act as Chairman for the duration of the meeting. In favor: Galderisi, Klepac, Lihou, Petrozza, Phifer and Adelizzi-Schmidt.

Joanne Herron acted as Board Secretary.

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

Solicitor Marcolongo gave the board a brief history of the application beginning in 1996. He stated that on February 6, 2015 the Superior Court ruled that the zoning board had erred in not hearing the application and remanded the matter to the board to hear the application on its merits.

Mr. Dietrich testified that seating is based on patron area of 1 space per 30 sq. ft. and not the number of seats.

Mr. Holt testified they are requesting 20 additional seats on the second floor ancillary to the first floor use. There are six undersized booths on the first floor. He does not agree there are 24 seats on the first floor since the booths are only 40" long. He submitted two photographs of the interior of the property that were marked P-1 and P-2. He photos show that only two people can sit at a booth. He has been in business in the township for 18 years. He has four children, one in college and one source of income. They try to accommodate their customers the best they can. He stated they have been paying taxes on the second floor for thirteen years and have not been able to use it.

Mr. Holt testified that when Mr. Kenney, Building Inspector, inspected the property he made them tear out the steps to the second floor and install commercial steps in. He also made them install a handicap bathroom upstairs. The Cape May County Department of Health issued correspondence dated February 7, 2007 giving approval to add twenty seats for a catering hall that has one seating daily. A copy of this correspondence was marked P-3. A second letter issued by the Cape May County Department of Health dated January 19, 2006, allowing the second floor to be used as commercial office space with a limit of 1,728 sq. ft. only was marked P-4.

Mr. Holt testified that he feels the additional seats would not be a detriment to the neighbors. He feels there are enough parking spaces in their parking lot. There are 37 onsite parking spaces including 2 spaces for oversize parking. Previously at the board's request he added signage for large vehicles. A photo of the sign was marked P-5. He stated there are other businesses built after his that did not have to put up these signs.

Mr. Dietrich testified the first floor patron space is 1,530 sq. ft. requiring 51 parking spaces, plus one space for the office area, for a total of 52 spaces. There are 29 spaces striped and approved on the plan.

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Mr. Holt submitted a letter from Monsignor Peter M. Joyce, dated April 9, 2015, stating that Ralph's Bagels may use the church parking area since it is not utilized to its fullest during the peak hours at Ralph's Bagels. This correspondence was marked P-6. He also submitted correspondence from Bruce LaVenia, Postmaster, offering additional parking spaces at the post office for the applicant to use. This correspondence was marked P-7.

Mr. Dietrich referred to the *Revised General Ordinance of the Township of Upper, Section 20-5.7 (a), 3 offsite parking*. Offsite parking must be within 1,500 feet. A condition would be the applicants would have to offer into an agreement to use the parking spaces.

Mr. Holt testified that he is not changing his hours of operation. The proposed seating upstairs would be to accommodate his customers since there is limited seating downstairs. His intent is to utilize the second floor for more than storage. Access to the second floor is outside. The stairs have handicap railings. He feels the overflow seating would be used at least once daily. There would not be any food preparation upstairs.

The meeting was open to the public.

Mark Stein, Esquire, was present to represent Keith and Sally Jack who reside at 48 Stagecoach Road in Marmora. He disagrees with the applicant's testimony that there have not been any complaints made regarding his business. He asked if the upstairs could be used for other functions such as showers. He feels the applicants are using economics as their hardship. He addressed the previous applications heard by the board and the requests for rezoning of the property previously heard by the planning board. He believes the positive criteria has not been satisfied.

Barbara Allen Woolley Dillon, Licensed Planner, was sworn. She testified that economics cannot be used to satisfy the positive criteria needed to grant a use variance. She stated this is not an inherently beneficial use.

Wayne Jack, 115 Tuckahoe Road, Marmora, was sworn. Mr. Jack stated this is a residential zoned property and the applicant is the only commercial use. He is opposed to the applicant using the upstairs.

Hearing no further comment the meeting returned to the board for findings of fact.

MR. PHIFER – Ralph and Deanna Holt are before the board concerning their property at 12 Tuckahoe Road, lot 19 in block 652.01, also known as Ralph's Bagels and Deli. The applicant is requesting 20 seats on the second floor of his property. The applicant received approval to operate a bagel and deli shop in 2001 with the second floor being used as storage only. The hours of operation at that time were 6:30 a.m. until 4:30 p.m. Over the years he has had other requests for catering denied and variances have been approved for additional seating on the first floor. At this time the applicants are requesting an additional 20 seats upstairs to use for overflow. There was no testimony from the public in favor of the application. There was testimony from the public against the application. Professionals were presented to the board giving making legal arguments and reviewing the applications history over the years. These professionals stated that economics are not a special reason for granting of the application. Parking was not discussed since the applicant provided letters from the post office and the church offering their parking areas to the Holt's to use as additional parking for Ralph's Bagels. He believes that pursuant to

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NJSA4055D special reason g. He finds this is a desired business in the community. He feels the community does not have enough local mom and pop owned restaurants. He believes the use on the second floor would meet special reason g. He does not feel this is a detriment to the community since the applicant is not asking for additional hours or additional uses. He has been to the facility and only two people can sit at a booth.

MRS. GALDERISI – There are handrails going up the stairs for a commercial use. She has seen the applicant promotes good community connections such as the church and post office allowing the applicants to use their parking.

MR. KLEPAC – He concurs. Based on the testimony of the applicant parking does not seem to be a problem. Letters have been introduced supporting the application and legitimacy of this operation. Patrons usually leave within the hour.

MS. PETROZZA – She agrees that special reason g applies. She feels the application could be granted without substantial detriment to the public good. She feels there are special reasons for granting the application.

MS. ADELIZZI-SCHMIDT – He agrees with the findings made by Mr. Phifer. She finds that special reason g supports what is being requested. She is basing her support of the application on the patrons that come into the establishment and cannot sit down such as the elderly coming from church. She finds that granting the application would be beneficial to the community.

MR. LIHOU – He concurs that the positive criteria that applies is g. He feels the applicant has met the negative criteria.

MR. SHAWL – He agrees with his colleagues.

A motion was made by Mr. Phifer and seconded by Ms. to grant the use variance for expansion of a non-conforming use to permit 20 additional seats on the second floor for overflow seating with the condition that prior to the second floor use the applicant must obtain a lease from the church and/or the post office in accordance with the terms required under the zoning ordinance and there would be no food preparation upstairs. In favor: Klepac, Lihou, Petrozza, Phifer, Adelizzi-Schmidt. Opposed: Shawl.

### ADJOURNMENT

A motion to adjourn the meeting was made by Ms. Adelizzi-Schmidt and seconded by Mr. Phifer. The meeting was adjourned at 10:25 p.m.

Submitted by,

Shelley Lea