

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT

MEETING MINUTES

MAY 9, 2019

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, Richard Mashura, Lynn Petrozza, Christopher Phifer, Andrew Shawl, Larry Trulli, Matthew Unsworth, Paul Casaccio.

Absent: Joseph Healy, Ted Klepac, Karen Mitchell.

Also, in attendance were Jeffrey Barnes, Esquire, Board Solicitor; Paul Dietrich, Board Engineer; Shelley Lea, Board Secretary and Zoning Officer.

SWEAR IN PAUL DIETRICH AND SHELLEY LEA

APPROVAL OF THE APRIL 11, 2019 MEETING MINUTES

A motion was made by Ms. Petrozza and seconded by Mr. Unsworth to approve the minutes. In favor: Mashura, Petrozza, Phifer, Shawl, Unsworth, Casaccio. Abstain: Galderisi, Trulli.

APPLICATIONS

1. FRANK AND MONICA DIRENZO – BLOCK 599 LOT 21.06 (C00001) – BA 01-19

Applicants are requesting amended site plan approval to permit seating in the existing restaurant and to allow two apartments on the second floor and a setback variance for a shed at 3075 Route US 9 South in Seaville.

Cory J. Gilman, Esquire, represented the applicants. Gary Lee Thomas, Professional Land Surveyor and Planner and Robert Bradfield, Manager of the property, were sworn.

Mr. Gilman stated the property is located in the R2 zoning district. He stated that the applicant previously appeared before the board and was granted approval per Resolution BA 12-08. He stated the applicant has been cited by the zoning official for violations of the original site plan approval. This includes a fence, storage shed, number and use of the residential apartments and a change in the commercial portion of the property. The

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intent of this application is to bring the property into compliance with the original site plan with the addition of a storage shed and seating in the restaurant. A side yard setback variance is needed for the shed since it is 8.19' from the property line where 10' is required. A use variance is needed for a change of use since the original approval was for a takeout only deli.

Mr. Thomas testified as to what currently exists on the property. There is now seating for 42 inside the restaurant where there was only takeout. He stated they are providing 20 parking spaces where 16 are required. Parking is provided for the restaurant, employees and the residential apartments. The shed is in a parallel parking space that was probably never used. He stated that some of the improvements were not put in correctly. The parking will be realigned so it is in the correct location this time. The white vinyl fence that was part of the original approval will be installed as shown on the Site Plan Modification and Use Change Plan, dated 01/09/2019. He feels the intensity of the restaurant is less than a takeout deli. The restaurant serves breakfast and lunch until 3 p.m. The variances required are pre-existing non-conforming except for the shed. The non-conforming conditions are not being exasperated in any way. The landscaping will have to be enhanced since it was only partially done and not maintained. The fence was installed but sections are falling. He finds there would not be any detriment to the public good or any substantial impairment to the intent and purpose of the zone plan or ordinance if the variances were approved since these are pre-existing conditions that have existed for years. He feels the side yard setback can be granted since the benefits outweigh the detriments. He believes that special reasons exist for granting the use variance and that it is important for a community to have a restaurant like this one. The restaurant has operated with seating for 3 years without any problems. He believes that bringing the property back into compliance is a benefit to the public and that the site is particularly well suited for this type of use.

Robert Bradfield testified his in laws have owned the property for 10 years. At that time a partner that was 100 percent responsible for the property. After three years he no longer wanted to manage the property. They then rented to someone else to operate a deli for about one year and another after that. The current restaurant, Theresa D's has operated here for three years. Mr. Bradfield came along a year ago to assist in running the property. He is aware of the violations on the property and has been given a list of items by the zoning officer that need to be addressed. He stated that he is present at the site weekly if not daily. They propose to reconfigure the residential units so there are only two units on the second and third floor as shown on the previous site plan. The apartments will be rented to the applicants' employees. The rent is payroll deducted. No space on the first floor will be used as a living space.

Mr. Dietrich commented that a condition should be made that the former living space on the first floor cannot be used as part of the restaurant without approval.

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Mr. Gilman stated the deed restriction that was a condition of previous approval was not filed. There was communication with the NJDOT about signage that was part of the prior approval, however the signs were not installed.

Mr. Bradfield testified the 2nd floor unit is rented to a husband and wife and the 2nd and 3rd floor is a father and son, all are employees of the applicant.

Mr. Gilman agreed to have the site improvements complete and the deed restriction submitted within 45 days. He requested 90 days to submit a permit to the construction office.

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

MR. SHAWL – Frank and Monica DiRenzo are the owners of 3075 Route US 9 South in Seaville also known as Block 559 Lot 21.06 C00001. The applicant was previously granted site plan approval per Resolution BA 12-08. Conditions of that approval were that the property would be developed according to the submitted plan, the deli would be used for take-out only and there would not be any interior or exterior seating and that the rental units would be placed into the COAH inventory if they were no longer rented their employees. The zoning officer and township engineer have been to the property and found there are 42 seats inside the restaurant, a shed has been placed in a parking space and does not meet the setbacks, the fence was not being maintained and sections were missing and there are residential units in the building without a deed being filed.

Testimony was given that there have not been any traffic or parking issues. The applicant proposes to repair the fence, add additional plantings and correct the other citations issued by the zoning officer. Testimony was also given that the site is particularly well suited and there would not be any detriment to the public good or zoning plan by granting the use variance for the seating. The applicant has agreed to comply with the site plan issues and deed restrictions within 45 days. He further agrees to obtain construction plans for the apartments within 90 days. The current property manager intends to correct the violations and make sure things are now done in compliance with the approvals granted. He agrees with the special reasons given by Mr. Thomas. There was no public comment.

MS. PETROZZA – there was no public comment within 200 ft. or outside of 200 ft. She finds that special reasons were given for a D variance and that relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning plan and zoning ordinance. She believes that special reasons b and I apply. She finds the application can be granted without detriment to the public good.

MR. PHIFER – He agrees that a business like this is good for the township. He finds the applicant has provided special reasons for granting the variance such as a and g.

MR. TRULLI – He concurs.

MR. MASHURA – He concurs. He finds this section of the township is limited in restaurants and that it would be a benefit to the community to have a have the restaurant.

MRS. GALDERISI – She agrees. She finds it is imperative for the applicant to meet their commitments.

MR. CASACCIO – He concurs.

A motion was made by Ms. Petrozza and seconded by Mrs. Galderisi, to grant the application with the condition the applicant satisfies all violations and submits a deed restriction within 45 days, the applicant obtains construction drawings within 90 days, there will not be any living space on the 1st floor and no expansion of the seating area on the 1st floor based upon the plan that was submitted and approval by the condominium association. In favor: Galderisi, Mashura, Petrozza, Phifer, Shawl, Trulli, Casaccio.

2. THE BARTON FAMILY TRUST – BLOCK 723 LOT 61 – BA 05-19

Applicants are requesting classification of a 4-lot subdivision along with preliminary and final subdivision approval, a use variance to allow an existing second dwelling unit to remain, and bulk variances for existing non-conforming conditions at 307 Route US 9 North in Beesleys Point.

Julius N. Korschak, represented the applicants. Charles and Jennifer Barton 307 N. Shore Road, Vincent Orlando of EDA, Thomas and Jaffe Rae Mullineaux, 5 Gardners Lane, were sworn.

Mr. Korschak submitted Exhibits that were marked by the solicitor. Exhibits A-1 and A-2 are photos of the existing home and garage, A-3 is plan of major subdivision revised on 5-08-19 that adds proposed buffering area and A-4 is an email from Raymond Went, Jr., Esquire, indicating his clients Mr. & Mrs. Pustizzi would no longer be objecting. He requested the board classify the subdivision as a major since there are 4 lots proposed. He stated the house was built in 1904. The Barton's are the great grandchildren of the original owners. This is a 104-year-old historic house. There were 2 houses on the property, but one burned down in the 1970's. The garage was originally an engine house that was converted into living space for the grandparents. This was all part of a large farm that ran all the way to the bay. He stated the applicants agree to place a deed restriction on the garage apartment, so it can only be used by family. The proposed lots are large and exceed the lot area requirement. The two front lots are conforming except for the setback to the existing house. The back lots are unique since they are accessed from a drive off two street ends. The revised plan by Martinelli Group shows a double row of 6 ft. tall evergreens.

Charles Barton testified that in the 1800's Henry Young owned land that stretched from the ocean to well west of where we are now. The property was divided up between his four sons. Willard Young, who was Mrs. Barton's great grandfather built this house around the turn of the century. In the 1960's when the Garden State Parkway was created it split the property up leaving 26 acres in the meadows that was donated in the past few years. This left about 10 acres between Route 9 and the parkway. This was a farm with crops and farm animals. Mrs. Barton's father subdivided the property to create

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Homestead Road leaving the applicants 4.5 acres. One of the houses on the property was destroyed by fire leaving the house and engine house. Mrs. Barton's father converted the engine house into an apartment for the grandparents. The apartment was rented until recently.

Mr. Mullineaux testified that if the application is approved he will be purchasing a triangular piece of property from the applicant to make his property more conforming. He is in favor of the application.

Vincent Orlando testified a D variance is needed even though the house and garage apartment are pre-existing. He believes the purposes of zoning are advanced as shown in special reasons "a" and "j". He believes there would not be any detriment to the public good since the structures have existed for over 100 years. There would be no detriment to the zoning plan or zoning ordinance since the apartment will be deed restricted so that only the owner's relatives can live there. He stated that lots 61.12 and 61.13 require a frontage variance. He feels the variance can be granted since this is a unique property. He stated the applicant could build a road along the easterly property line, but this would create more of an impact to the adjacent properties. He doesn't believe the access off Homestead Court or First Avenue would have a substantial impact to the neighborhood, the zoning plan or zoning ordinance. He stated that a road would have more impact on the municipality since there would be more infrastructure to maintain.

Mr. Dietrich concurs that a street would not improve the overall circulation in the area. The township would have more roadways to take care of and drainage and more taxing on the environment since there would be more impervious coverage. He stated the subdivision plan conforms with the Township standards. He suggested adding a note to the plan that no clearing would take place in the area described.

The bamboo on the property was discussed.

The meeting was open to the public.

Stacy Dotts, 1 Gardner Lane, was sworn. She stated that there is bamboo on the subject property and on her property. She does not want to be blamed for the bamboo spreading since it was on her property when she purchased it. Mr. Dietrich stated that each property owner would have to maintain the bamboo so that it does not spread.

Christopher Pustizzi, 9 Homestead Court, was sworn. He asked about the vegetation.

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

MR. SHAWL – The Barton Family Trust is the owner of 307 North Shore Road in Beesleys Point also known as lot 61 in block 723. The applicant wishes to subdivide the property into 4 lots. Two of the new lots would be accessed from Route 9 and the other two from First Avenue and Homestead Court. The existing house was built in 1903 and

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has maintained its historic character. There is currently a non-conforming front yard setback. The house has remained in the family since it was built. Existing lot 58.02 will receive 3,359 sq. ft. as part of the subdivision. The applicant will deed restrict the garage apartment to be occupied by the family of the main house. Vince Orlando testified the use variance could be granted using special reason a and J. He also testified there would not be any detriment to the public good or the zoning plan. The surrounding area is zoned residential. The applicant has agreed to curbs, sidewalks and concrete driveway aprons. The aesthetics of the neighborhood would be preserved, and access can be provided without a new street. The historic character of the house can be preserved. The frontage variance can be granted because of the unique shape and size of the lot. Bamboo was discussed, and the applicant agreed to comply with the ordinance. The applicant will provide a 10 ft landscape buffer.

MS. PETROZZA – She concurs.

MR. PHIFER – Nothing to add.

MRS. GALERISI – She finds that preserving the historic home is a benefit to the township.

MR. CASACCIO – The applicant has agreed to a 10 ft landscape buffer.

A motion was made by Mr. Mashura and seconded by Ms. Petrozza, to grant the application with the condition the applicant file a deed restriction for the garage apartment and the plan is amended to evidence a 10ft buffer. In favor: Galderisi, Mashura, Petrozza, Phifer, Shawl, Trulli, Casaccio.

3. KAROLANN KEMENOSH – BLOCK 723 LOT 56 -BA 18-18

Application is for an appeal of the decision of the zoning officer that the existing structure is a duplex and requires a use variance at 1 Bayaire Road in Beesleys Point.

Jon Batastini, Esquire, represented the applicant. James E. Chadwick; Christine Dilks, 42 Ventnor Avenue; Karolann Kemenosh, applicant; Vivian Kemenosh, from Ocean City and Bob Graham, 4 Gardners Lane, were sworn.

He submitted photos and Solicitor Barnes marked them. Exhibit A-1 is a 3-page MLS listing that indicates a mother in law suite

Bob Graham testified he was in the house for the first time in the early 1990's. He stated there was a porch where they would sit out at night. He remembers the mother and father of the previous owners lived in the addition. He discussed the changes made to the exterior of the structure since the applicant has purchased the property.

James Chadwick, Architect and Professional Engineer, referred to a construction drawing from 1993 creating a sewing room and a den addition. Exhibit A-5 shows the screen porch on the addition. He explained the current floor plan of the structure. The den shown on the plan is now a bedroom, the sewing room is now a living area and the bathroom has been enlarged so there is now a shower, toilet, sink and linen closet. The

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kitchenette is an L shaped counter with a corner sink, dishwasher that they dated back to 1993, small refrigerator and toaster oven. There is not a full-size range but there is a cooktop. In 2004 the applicant applied for permits to do renovations to the main portion of the residence. He stated there are portions of the main structure that are shared and the bathroom that separates the two units is shared. The previous tenant shared the kitchen and dining area in the main house and the washer/dryer. There is one electric meter for the structure. There were two but now there is only one. He feels the structure meets the definition of a single-family dwelling.

Mr. Casaccio stated there is natural gas with two meters, two hvac units and multiple exterior entrances. Mr. Chadwick stated that the full-size range was removed as part of the renovations in 2004.

Karolann Kemenosh testified she purchased the property in 2004. There was a full-size refrigerator and stove in the in laws suite when she purchased the property. The house had four bedrooms, but she converted one into an office. She reviewed a law suit she had with the contractor she hired to the renovations in 2004. She rents two rooms in her house. There is a washer/dryer, kitchen and dining area that she shares. There is also a bathroom with a walk-in shower that she uses to bathe her dogs. She discussed a former tenant that made her very uncomfortable and tried to block the bathroom door before she had him move out. Because her lease was so detailed she was able to have him evicted within 3 weeks. She purchased the property when her mother's health began to decline. Her father moved into the house and they were able to have their privacy and independence. Her father contributed to the household expenses.

Shelley Lea, Zoning Officer, explained it is not the existing rooms that is the issue but how the structure is being used. Mr. Dietrich referred to the definition of a housekeeping unit where there is shared living space and no income. The lease indicates there are 2 rooms being rented on the east side of the home with a separate entrance. There is no mention of shared space. He stated where there is a mother in law suit there is typically not a formal rental agreement. There is a small kitchenette in the rental space and a door separating the two units. He believes the advertisement shows the space is being rented as a separate unit.

Ms. Kemenosh referred to the landlord tenant laws in the State of New Jersey. The wording on the advertisement was to find the person she wanted and knew what she had to say to get them to look.

Kristen Dilks, testified she lived in the residence from March 2018 to March 2019. She has used the applicant's kitchen to bake and to cook casseroles. She has used her refrigerator for ice and filtered water. For the most part she was the one that used the bathroom. She used the laundry facilities and used the driveway to park her car. She used one check per month to cover everything. Her son would watch tv on her side at times. There was one other person in the house but she was not certain of the situation. Ma

Due to the late hour the board stopped taking testimony. This application will be continued to June 13, 2019 at 7:30 p.m.

RESOLUTIONS

1. BRUCE W MYERS JR -BLOCK 548 LOT 10 – BA 02-19

A motion was made by Mr. Shawl and seconded by Mr. Phifer to adopt the resolution. In favor: Mashura, Petrozza, Phifer, Shawl, Casaccio.

INVOICES

A motion to pay the bills as presented was made by Mrs. Galderisi, seconded by Mr. Shawl, and approved.

ADJOURNMENT

A motion to adjourn the meeting was made by Mrs. Galderisi, seconded by Ms. Petrozza, and approved. The meeting was adjourned at 10:41 p.m.

Submitted by,

Shelley Lea
Board Secretary