

# **UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT MEETING MINUTES AUGUST 8, 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: Richard Mashura, Lynn Petrozza, Christopher Phifer, Andrew Shawl, Larry Trulli, Matthew Unsworth, Paul Casaccio.

Absent: Sherrie Lisa Galderisi, 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 JULY 11, 2019 MEETING MINUTES**

A motion to approve the minutes was made by Mr. Unsworth, seconded by Mr. Mashura, and approved. Abstain: Casaccio.

## **APPLICATIONS**

1. OAK RIDGE RESORT CONDOMINIUM ASSOC – BLOCK 600 LOT 62 – BA 10-19

Application is for a use variance for the expansion of a non-conforming use and a site plan waiver to construct a 20' x 55' open air pavilion in the campground pool area at 516 Route US 9 South in Marmora.

Greg Shivers, Esquire, represented the condominium association. Andrew E. Minarcik, member of the condo association, was sworn.

Mr. Shivers stated there is currently a very old 20' x 40' wood platform with a canvas roof on the property. They would like to replace the platform with a new 20' x 55' rectangle wood pavilion. Drawings and photos showing what the pavilion would look like were included in the application. Notices were sent to condo owners within 200 ft.

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Mr. Minarcik testified the proposed pavilion would not affect the parking or traffic flow. He stated the current structure extends perpendicular to the pool and into the parking lot. The proposed pavilion is parallel with the pool which will be more aesthetically pleasing and increase the area of the stone parking lot. The proposed pavilion will be the same style as the existing picnic pavilion. He believes the pavilion would increase the enjoyment of the recreation area. The pavilion would provide light, air and open space.

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

MR. SHAWL – Oak Ridge Resort Condominium Association is before the board regarding property at 516 Route US 9 South in Marmora also known as Block 600 Lot 62. The applicant proposes to replace a wood platform and canvas top with a new pavilion. This is a more permanent structure than what is there now. The orientation of the structure is changing slightly which will increase the size of the parking area. The pavilion would not negatively affect traffic flow or use of the parking lot. The design is similar to the existing picnic pavilion. The purpose of the pavilion is to increase the enjoyment of the pool area and provide light, air and open space. He finds the variance can be granted without detriment to the public good and without impairing the intent and purpose of the zoning plan.

MR. PHIFER – He concurs.

MR. TRULLI – He concurs.

MR. UNSWORTH – He concurs.

MR. MASHURA – He concurs.

MR. CASACCIO – He concurs.

A motion was made by Mr. Unsworth and seconded by Mr. Mashura to grant the application with the standard conditions. In favor: Mashura, Phifer, Shawl, Trulli, Unsworth, Casaccio.

2. SEAVILLE VILLAGE CONDOMINIUM – BLOCK 599 LOT 21.06 – BA 08-15

Applicant is requesting preliminary and final site plan approval, a minor subdivision and a use variance for the expansion of a non-conforming use needed to subdivide the property into 3 lots, a use variance to allow the existing commercial businesses, two with apartments attached to remain in a residential zone, a variance to allow a 52.5 sq. ft. freestanding sign, 30 sq. ft. building mounted sign and 945 sq. ft. outside display area on proposed lot 21.06 located at 3075 Route US 9 South in Seaville.

F. Thomas Hillegass, Esquire, represented the applicant. He started this application over so that members that were not present last month could vote on the application. He agreed to continue with only six board members present.

Vincent Orlando, Professional Engineer with EDA Associates and Michael Butterfield, 33 Fishing Creek Road, Cape May Court House, New Jersey, were sworn.

Mr. Hillegass stated this is a three-unit condominium. Mr. Butterfield owns two of the units. He submitted a corporate disclosure stating Mr. Butterfield owns 66.66% and Mr. & Mrs. DiRenzo own 33%. A resolution of Seaville Village Condominium Association appoints Mr. Butterfield to make the application before the board.

Solicitor Barnes explained that although Mr. Hillegass is starting this application over no new notices are required since it is a continuation of the first application.

Mr. Hillegass stated they have acquired the additional information the board requested at the last meeting.

Mr. Butterfield testified he owns the old Seaville Auto Repair and the Land and Sea Furniture Store. He hopes to make this 3-separate business on 3 separate lots. The proposed new lot lines are the existing condo lines as shown on the Plan of Minor Subdivision by DeVaul Surveying LLC, dated March 10, 2017. He has made small improvements to the property such as power washing, filling in potholes, removing an old rusted sign and installing a fence.

Vincent Orlando, Professional Engineer, reviewed the Variance Plan he prepared, dated 11-13-17 last revised 8-8-19. He testified that he has added an explanation of the variances required for each of the 3 proposed lots. He testified that lot 21.08 would have the same exact lot configuration as the condo plan. Lots 21.06 and 21.07 has been changed to provide lot 21.06 with frontage on Route 9 since it had none. He stated the buildings have been on this property for at least 60 years. He feels that separating the parcel will be a benefit since each business would be responsible for complying with the township ordinances.

Mr. Orlando stated that variances are being requested to allow a 24 sq. ft. sign above the door to provide visual identification for the furniture store and a 52.5 SF freestanding sign to identify Land and Sea Furniture and J's Auto. They believe it is best to have one sign that identifies both properties. A handicap parking stall has been added as well as two display areas. The property is in the R2 zone and commercial uses are not permitted. He believes that purposes of zoning do exist since the buildings have been there for many years and this is an appropriate use for this location. He finds there is no detriment to the public good. He feels the benefits of granting the variances outweigh the detriments. He believes the aesthetics would be enhanced if the variances were granted and that the sign variances could be granted since they would better identify the buildings. The applicant agrees to work with Mr. Dietrich to enhance the landscaping on the site to create a better buffer for lot 21.05.

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Mr. Dietrich stated the ordinance allows one principal structure on a lot. There are currently three principal structures on this lot. If approved the property would be more conforming since there would be one principal structure on one lot.

Mr. Orlando testified if the application is approved it would be specifically for the existing uses. The property owner would have to come back before the board for any change in use or any modifications to the building. He stated there is no commercial access off Argoe Drive and there is no access proposed. Each lot would have its own well and septic. The condominium association currently in place would be extinguished. The applicant will amend the side yard setback shown on the plan for lot 21.08 from 68' to 20'. Mr. Dietrich stated the subdivision plan must be revised to show the State coordinates before the plat is filed.

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

MR. UNSWORTH – The applicant is requesting a three-lot subdivision of an existing condominium association where there are three individual businesses in three separate buildings on one lot. This subdivision creates several variances that are indicated on the plan. The applicant has testified that by granting the approvals the township will be able to better identify and enforce the ordinances. This is a unique situation since the three commercial uses are in a residential zone. The subdivision creates three undersized lots. The use of the site will not be affected. Changes to the site include handicap parking, signage for safety and aesthetics and two display areas. The proposed subdivision gives the township a document to enforce the existing conditions and setbacks on the property. Additional landscaping will be added to improve the aesthetics. Each lot will have its own well and septic. The condo association would be eliminated if the subdivision is approved. The existing lots predate zoning and are a pre-existing non-conforming use. There was no public comment on the application. He finds there is no detriment to the public good.

MR. MASHURA – He agrees.

MR. SHAWL – Testimony was given that the area is particularly well suited for this location due to its long history. There are existing residential and commercial uses in this area.

MR. PHIFER – The lot lines on lot 21.06 will change to create frontage on Route 9. The buildings predate zoning which creates a lot of uniqueness that is occurring on this site. He finds the application can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning plan or zoning ordinance. Pursuant to NJS40:D-2 special reasons b, I and k apply.

MR. TRULLI – He finds that granting the application would be a benefit to the township and the neighborhood.

MR. CASACCIO – He concurs.

A motion was made by Mr. Mashura and seconded by Mr. Unsworth, to grant the application with the condition the resolution incorporate the plans prepared by EDA,

dated 8-8-19 be attached to the resolution and the variances requested for building mounted sign, freestanding sign and outside display area will also be attached to the resolution, the master deed will be revoked prior to the filing of the subdivision plat, lot 21.08 must fulfill their prior obligations, the subdivision plan must be revised to include the coordinates. In favor: Mashura, Phifer, Trulli, Unsworth, Casaccio. Opposed: Shawl.

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

Continuation of an application 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.

Ms. Petrozza joined the board at this time. Mr. Unsworth has listened to the recordings of the previous hearing so that he can participate in the application.

Jon Batastini, Esquire, represented the applicant. James E. Chadwick, P.E. and Karolann Kemenosh, applicant, were previously sworn.

Chairman Casaccio put on the record that Ms. Kemenosh approached him at his office in Marmora wanting to discuss the pending application. He asked the applicant to stop and no discussion involving the application took place.

Mr. Batastini stated that the applicant's family will be moving into the home and that the property would be taken off the rental market. The property would be occupied as one household unit. Ms. Kemenosh will provide a deed restriction indicating this is a single-family home. If the owner decides to rent the property again, she will come back before the board. There is a renter in the property, and they hope to give her 60 to 90 days to vacate. Ms. Kemenosh testified that a lease was not signed with this renter.

Solicitor Barnes stated that the court violations pending with the zoning officer will continue to exist for occupying two separate units.

Mr. Chadwick stated there is a door in the bathroom that connects the two units. He stated there are exterior doors in both units. These doors are there for emergency personnel. He stated there is no oven in the unit. He feels that if the cooking appliances are removed such as the cooktop, fridge and glorified toaster oven it would not be a kitchen.

There was discussion about interior renovations and opening up the space, however Ms. Kemenosh stated this could not be done because of the location of the furnace. She stated there are two gas meters and one electric meter.

The meeting was open to the public.

Nathalie Neiss, 759 Route 50, Petersburg, was sworn. Her opinion is that since there is no stove this is a single-family dwelling. She feels this is pre-existing and supports the applicant.

Ms. Lea testified that the last plans on file were to create a den and sewing room. It is not known when these rooms were converted into a bedroom and family room with a small kitchen area and eating space. The separation between the units is a bathroom where the door can be locked on the applicants side to create a separate unit.

It was determined that an inspection of the premises will be done on September 10, 2019 to confirm that all cooking facilities have been removed. The second inspection will be on October 15, 2019. A deed restriction must be forwarded to the board solicitor no later than September 10, 2019. The court date scheduled for the end of August will be postponed until after October 15, 2019.

The board was asked for their finding of fact.

MR. UNSWORTH – Karolann Kemenosh is before the board for an interpretation of the zoning officers ruling as to whether 1 Bayaire Road is a single or a two-family dwelling. Drawings and photos were reviewed as well as lengthy discussions. It has been determined that cooking facilities must be removed to eliminate the second unit. He finds the zoning officer's interpretation is correct, and this is a two family dwelling the way it is currently configured and used. There was public comment in favor of the applicant.

MR. SHAWL – The applicant presented architect drawings of the home which is a single floor with a bathroom that connects each side. There is a living room, bedroom, bathroom and cooking facilities that is connected to the rest of the house through a bathroom. He concurs with the zoning officer that both units can function independently since they have their own living, sleeping, cooking and sanitary facilities and the suit has its own entrance. The zoning officer supplied the board members with an advertisement for the rental of the suit and a rental agreement from a former tenant. He finds this is a two-unit dwelling.

MS. PETROZZA – She concurs.

MR. PHIFER – He agrees with the zoning officer's interpretation. He finds the home was functioning as two individual units that could function independently with their own sleeping, cooking and sanitary facilities. Both units have their own entrances.

MR. TRULLI – He concurs with Mr. Shawl.

MR. MASHURA – He agrees with the interpretation by the zoning officer.

MR. CASACCIO – He concurs.

A motion was made by Mr. Unsworth and seconded by Ms. Petrozza, that this is a two-family dwelling in violation of the zoning ordinance and that the applicant has agreed to certain conditions that would result in modifications to the house to ensure that it is a single family home as agreed upon by the board by converting the house back to a single family housekeeping unit by removing the griddle, toaster oven and microwave, the

applicant will supply a copy of a filed deed restriction indicating the house may only be utilized as a single family dwelling, the applicant agrees to provide the deed restriction by September 10, 2019, the applicant agrees to an inspection of the house by the zoning officer on September 10, 2019 and further agrees to a final inspection of the home on October 15, 2019. In favor: Mashura, Petrozza, Phifer, Shawl, Trulli, Unsworth, Casaccio.

### **RESOLUTIONS**

1. ANDREW SIMMERMAN – BLOCK 659 LOT 1.02 – BA 09-19

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

2. MICHAEL PETTIT – BLOCK 453 LOT 10.09 – BA 08-19

A motion to adopt the resolution was made by Mr. Phifer, seconded by Mr. Trulli, and approved.

### **INVOICES**

A motion to pay the bills was made by Mr. Unsworth, seconded by Mr. Shawl, and approved.

### **ADJOURNMENT**

A motion to adjourn the meeting was made by Mr. Unsworth and seconded by Ms. Petrozza. The meeting was adjourned at 9:31 p.m.

Submitted by,

Shelley Lea