

UPPER TOWNSHIP PLANNING BOARD MEETING MINUTES SEPTEMBER 16, 2021

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

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Present: Georgette Costello, Ted Kingston, Janet McCrosson, Christopher McGuire, Gary Riordan, Richard Palombo, Robert Young, Joseph Harney.

Absent: Curtis Corson, John Klebaur, Craig Reeves.

Also, in attendance were Jeffrey Barnes, Board Solicitor; Paul Dietrich, Board Engineer; Liz Oaks, Board Secretary.

APPROVAL OF THE AUGUST 19, 2021 MEETING MINUTES

A motion was made by Mr. Kingston and seconded by Ms. Janet McCrosson and approved. Abstain: Costello, McGuire, Young

Board members Mr. McGuire and Ms. Janet McCrosson have stepped down during this application.

APPLICATIONS

1. Marshallville Farms, LLC – BLOCK 12 LOT 23.01 – PB 05-2021

Applicant is requesting site plan waiver and variance relief for a “Pick Your Own” farm at 375 Marshallville Road, Woodbine, New Jersey.

Nick Talvacchia, Attorney for the applicant. They are before the board to seek relief from parking requirements in connection with a u-pick farm. These types of farming operations are governed by state law and deemed to be permitted uses and approved at the county level. But the county farm board has said that certain relief is required from the municipality. There is nothing specifically required for parking, they currently have 10 spots and feel that is adequate. They need relief from lighting requirements. They do not believe they are necessary for a daytime farm. Relief in landscape design, given the location of 200 feet from the road and the distance from neighbors.

Betty Jean Yank, 302 Marshallville Road, Tuckahoe was sworn. The applicant testifies that this year they opened u-pick strawberries, blueberries, raspberries, and blackberries. She intends to continue that and expand into vegetables to be sold at the farm stand. This winter they plan on working in conjunction with Stockton to tap the maple trees on the property to draw sap and hopefully evaporate on site to make maple syrup. Stockton has marked a number of trees to study.

They still have the front field which is about 2.5 acres they have yet to decide what to put there. They want to construct a new barn because the existing barn is about as old as the house. They need something taller to include an upper level for hay or a workshop. And storage for tractors or equipment and maybe livestock in the future. The barn is a primary structure on a farm, therefore does not need a variance.

Paul Dietrich, Township Engineer, was sworn. He concurs the barn is a principal structure therefore does not need any height or setback relief.

John Halbruner, Engineer, 701 West Avenue, Ocean City was sworn. Mr. Halbruner testifies that the property is approximately 21 acres with about 15 acres being used for farming. It fronts Marshallville Road and backs up to the Tuckahoe River. The east and west neighbors are single-family dwellings. There is an older single-family home along with some greenhouses and storage sheds. The proposed structure is 225 feet from Marshallville Road, it is approximately 100 plus feet from neighbors to the east and west. The need for landscape buffers is to shield neighboring properties. This site has a well-established existing tree line creating its own buffer and existing farmland. The site itself serves as its own buffer. There is an existing stone driveway. The 10 parking spaces will be past the proposed structure and will include one paved spot for handicap use. If ever there were any need for more parking the length of the driveway would prevent any parking backing up on to Marshallville Road. The lighting requirements are non-existent because this is a farm that is used during the day and is a seasonal operation. It is limited in the frequency in cars coming and going. They believe that leaving the site in its natural state rather than paving and curbing as in a commercial zone is far better for the land. One of the purposes of the Municipal Land Use Law is to guide development in a way that achieves the goals of the state of New Jersey and the municipality. New Jersey is the "Garden State" in which farming is encouraged. These proposed variances are establishing appropriate uses in appropriate areas. In terms of negative criteria, if these variances are granted there would be no substantial detriment to the public good or zone plan due to the proximity of the parking and limited hours of business. There would be more detriment if they were complying. The proposed barn will include electric.

Mr. Dietrich explains that there are various signs relating to farmstands in the neighborhood and are permitted under the Right to Farm. This is regulated by the County which supersedes the Township. He agrees with Mr. Halbruner's testimony although he addressed a couple of the elements regarding the site plan waiver, there are several elements within the requirements under the ordinance for a site plan waiver. He does believe they have met these requirements. This project will not impact lighting, drainage, and parking. They definitely meet that criteria for being eligible for a site plan waiver as opposed to requiring a full site plan.

The meeting was open to the public.

Margaret Platt 505 Beach Drive, Corbin City, was sworn. She lives right behind the applicant, on the other side of the Tuckahoe River. She is concerned about the parking lot being closer to the river. Right now there is one light that is so bright that it shines on her property. All these cars will be pulling in and lights will be coming at her house. There are these two big white structures that weren't there when they moved in. She believes her privacy and atmosphere of living on the river will to a ruined by commercial property. It starts with one thing and grows into more. Her biggest concern is the light that shines on her property. She suggests maybe even a shield would help or maybe more trees.

There was a discussion between the applicant, Mr. Talvacchia and Ms. Platt regarding a solution to the lighting.

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

MRS. COSTELLO – Marshallville Farms, LLC represented by Mr. Talvacchia, is requesting variances based on lighting, surfacing and landscaping. The property is Marshallville Farms P.O. Box 271, Tuckahoe, New Jersey located at 375 Marshallville Road. They are asking to construct a new barn. The existing barn is approximately a 19 x 36 carriage barn. They need the new barn to store hay on the second floor and farm equipment on the first floor. The 29 feet height variance is not needed due to this being a primary structure for a farm rather than an accessory structure. The land area is 24.5 acres (15 +/- acres upland) The applicant, Mrs. Yank, spoke and explained her business as a u-pick farm started with blueberries and raspberries. They currently have a farm stand with vegetables and eggs. They are working with Stockton University to possibly tap some Maple trees for syrup. They are not certain what the front field will be used for at this time. Expert testimony from Mr. Halbruner that explained the variances they are asking for is the parking is 225 feet from the Marshallville Road. They do not propose this business to be used in the evening so they feel as if there is no benefit to lighting and would be more of a nuisance to the neighbors. The variance for the paving, they are planning on 10 parking spaces and will include one paved handicap spot per ADA. This is a seasonal business and there is limited traffic in and out of the business. They feel as if the paving would be more of a detriment due to the run-off. This application appears to be appropriate use and not determined to be a detriment to the public good or zoning plan.

MR. KINGSTON – He concurs and adds that there was one complaint by the public within 200 feet and that is to be addressed by the applicant.

MR. RIORDAN – Mr. Dietrich, Township Engineer, stated that he agrees with Mr. Halbruner's testimony. The variance plan was prepared by the Hyland Group dated August 11, 2021. And a survey of the premise's was prepared by the Hyland Design Group initially dated June 24, 2015 and last revised on May 6, 2021. And he concurs.

MAYOR PALUMBO – Concurs with his colleagues and adds that Mr. Dietrich testified that because of the Right to Farm Act that there are signs that could be used and they are well within their jurisdiction based on the Right to Farm Act versus what the Township might have in place for compliance of our requirements in the Township. The Right to Farm Act supersedes the Township signage requirements.

MR. YOUNG – He concurs.

MR. HARNEY – Adds the property is in the Tuckahoe Riverfront Zone. Hyland Design Group is the firm that Mr. Halbruner works for and Nick Talvacchia is from Cooper and Levenson Law Firm. He feels this meets the special reasons guidelines under the state statute to encourage agriculture. He thinks it is done with a nice barn that they are planning to put up. It should not have significant impact on any of your neighbors and he adds that it is nice that the applicant has offered to shield the light for their neighbor showing that they are willing to work with the neighborhood.

MR. BARNES – Motion to approve a site plan waiver along with variance for no lighting or parking, no curbing; stone and lawn surface instead of asphalt and concrete. No landscaping or buffer area along with the condition that a certain light fixture to be shielded appropriately to not allow light to shine across the river.

A motion was made by Mayor Palombo. and seconded by Mr. Kingston to grant the application with above requirements and the standard conditions. In favor: Costello, Kingston, Riordan, Palombo, Young, Harney.

Board members Ms. Janet McCrosson and Mr. McGuire have returned. Board members Mr. Kingston and Mr. Riordan have stepped down for the hearing of the next application.

2. Deauville Inn – BLOCK 850 LOTS 1, 1.01, 3, 3.01, 4 & 5 – PB 06-2021

Applicant is requesting amended site plan and variance for parking, directional signs and valet parking at 201 West Willard Avenue, Strathmere, New Jersey.

Dorothy McCrosson, Attorney for the applicant explains that, as the board know, there is a jurisdictional challenge that indicates this application should go before the zoning board rather than the planning board. She believes the challenge is base on the use of the adjacent Pancake House for parking, storage and prep work is considered an accessory use which is not permitted in that zone. She believes that the Deauville and Pancake House are adjacent and can fit under the definition of a “tract property” and an accessory use is permitted.

Mr. Jeff Barnes, Township Solicitor explains that Mr. Went prepared a letter indicating he represents Dr. Berger and Ms. Green. In that letter he argues that the planning board lacks jurisdiction to hear this application because of the principal use on lot 2, The Pancake House, a commercial kitchen and off-street parking are not a permitted use in the RC Zone. As a result, Mr. Went believes this board lacks jurisdiction. Tiffany Cuvillo has generated a report, dated September 16, 2021, maintaining why she believes this board has jurisdiction.

Mr. Raymond Went, attorney with NDG Legal, representing Dr. Berger and Ms. Green. Mr. Went believes lot 2, The Pancake House, is a standalone property. He does not agree with the statement that by virtue of being adjacent creates a “tract”. This property is under separate ownership. He maintains this standalone property is in the RC Zone and would require a use variance, which would go before the zoning board. He strongly suggests this board reconsider whether or not they have jurisdiction over this application.

Ms. D. McCrosson responds by stating that this is not an unprecedented situation in which two properties are included in one site plan. If you think about your ACME Supermarket, at the time a free-standing lot, and when it went forward for approval it included the land around it as part of their site plan. So, you may, as the planning board, consider more than one lot in site plan application. If the Pancake House were to reopen, they acknowledge they may need to come before the board with proposed changes.

Mr. Went is concerned that there is an apartment on the second floor of the Deauville that would require a certificate of non-conformity and use variance.

There is a discussion between the board, township engineer, township solicitor and the applicant’s solicitor regarding both residence and parking.

Ms. D. McCrosson states the prior agreement was clear that the Pancake House and the Deauville do not run at the same time. If there was a change creating competition for parking the parties would have to come before the board.

Mr. Dietrich explains the Township ordinance does allow for shared parking between properties and are not required to be adjacent. There must be an agreement between the parties.

Mr. Barnes explains what the board has before them, the report from Ms. Cuvillo; the arguments by Ms. D. McCrosson; the fact that there are similar sites such as ACME; the prior resolution that outlines exactly how the parking management is supposed to work.

Mr. Dietrich adds that there are other commercial scenarios in the township that are currently utilizing shared parking.

Ms. D. McCrosson confirms there is an employee that lives in an apartment that is under 650 square feet and has been there for many years. It falls under an accessory use and is permitted in this zone.

Mr. Young is questioning what changes occurred since the 2006 resolution.

Mr. Barnes explains that nothing has changed on the site. There are some inconsistencies that need to be addressed.

Mr. Harney takes a poll whether the board members believe they have jurisdiction.

MR. YOUNG – He believes if they approved the 2006 application and with no changes that they do have jurisdiction.

MS. COSTELLO – She agrees.

MAYOR PALOMBO – Based on the testimony of the township attorney and engineer. He concurs.

MR. MCGUIRE – He agrees.

MS. JANET MCCROSSON – Based on Mr. Barnes and Mr. Dietrich's testimony, she believes they do have jurisdiction.

MR. HARNEY – He concurs that they do have some authority over this application.

A motion was made by Mayor Palombo and seconded by Mr. McGuire to move forward with the application. All in favor.

Ms. D. McCrosson testifies that they originally came before the board to add bathrooms into a storage building. There were many meetings and issues arose about the site plan. After some discussion between herself and Mr. Barnes the applicant agreed to withdraw the application. In a report by Ms. Cuvillo, it was decided that the applicant did not need approval to put bathrooms in that building. Some things on site have changed and this is why they are here to memorialize what is there and what is permitted. There is one directional sign showing where to exit the parking lot they are requesting a variance for because it is larger than permitted. They are here for preliminary and final site plan to show what is there.

Mr. Vincent Orlando, Engineer, 5 Cambridge Drive, Seaville was sworn. Mr. Orlando described existing conditions as a unique application that originally went in one direction and changed since the 2005 application. The changes from 2006 to now is the way Upper Township determines the amount of parking spaces for a restaurant. In 2006 they were approved for 534 seats in the entire facility, inside and out. The ordinance changed from parking per seat to parking per square foot. There are some outside areas that are used for dining. They use a standard of one space per 4 seats. They believe 207 spaces when in 2006 it was 197. There is a valet plan in place that gives them the ability to park 219 vehicles. Between the dates of May 1st to October 15th they agree to have a full-time valet attendant from 11:00am to 11:00pm, as a condition of approval. The applicant agrees that they will provide valet service for any special events in the off season. He would like to note that in the off season they will not be using outside space and therefore they do not need the same amount of parking. He does not believe they need a variance for parking due to the valet plan which keeps them under the required parking spaces.

Ms. D. McCrosson adds that the current agreement between The Deauville and The Pancake House is for five years. If for any reason this agreement is terminated, the applicant is aware that they would need to amend their site plan. On the plan there is property at the extended end of Willard Avenue with a few pilings that is owned by the city. The applicant replaced those 3 pilings. They were previously permitted to do so pursuant to an Upper Township Committee resolution from 1996.

Mr. Orlando confirms even if there were to be a loss of the use of those pilings, the applicant could reconfigure and still maintain the parking of watercraft. He confirms that they have met with the county engineer to discuss the sidewalk along the county road. Originally a 4 feet sidewalk they agree to create a 5 feet sidewalk along Ocean Drive from the entrance and exit at the base of the bridge to Willard Avenue. To include lot 2, approximately 600-700 feet of sidewalk. He testified that the applicant has eliminated the bandstand from the site plan and are not seeking approval for that. They will no longer have outside music. There is the exit sign in the parking lot they are requesting a variance due to the size, 2 feet by 6 feet. They believe it is important to exit the parking area safely and effectively. He believes this meets the requirements of Municipal Land Use Law 40:55D that the benefits outweigh the detriment. There is no detriment to the zoning plan with little effect to the neighborhood. It benefits the general welfare of the facility by providing third safety mechanism. Using the raised septic bed for outside seating will be limited to 60 seats in the grassy area. That with the 120 seats in the sand and at the beach bar is more than enough. The 2005 resolution stated 50 seats outside. After studying the area, they believe this proposed site plan allows for the seating as well as provide ample parking. Previously there were beach chairs allowed and was difficult to manage and could easily lead to overcrowding, there will now be tables which can be better regulated.

Adam Modder, 201 Willard Ave, Strathmere was sworn. Mr. Modder testifies that he is currently living in an apartment at the Deauville on the second floor, it is under 650 square feet, part of the old Deauville and is the only apartment on site. He agrees with Mr. Orlando regarding the standard operating procedure in place for valet parking. He is in agreement with the hours and season of operation. He agrees to make adjustments if it needs to be tweaked to conform with the testimony before the board. Mr. Modder testified that the bandstand was removed as a reaction to complaints of the neighboring properties. He is well aware of the noise ordinance and the need to obtain possible permits if there is going to be a special event that may have outdoor music. They do not intend to include outside music on their regular schedule.

There was discussion regarding the frequency of special events.

Ms. D. McCrosson states that they have not agreed to no outside music. They are permitted to do so. The applicant has removed the bandstand and will not have regularly scheduled outside music. She does not want there to be a condition of the resolution that they can not have outside music.

Mr. Modder testified that they have been proactive about complaints of trash. They have had employees come in early to walk the property and neighboring two block areas to clean up. He feels as if they have been proactive in trying to address issues brought to them by the community.

Mr. Dietrich wanted to summarize a few small items that Mr. Orlando did not touch on. He wanted to highlight some items that were observed on a site visit on May 19, 2021. Along Willard Avenue a wood deck and handicap ramp were added on the front of the building for access to the restaurant. There is a fence façade that was added to a wall. near the location marked “7 parking spaces” on the plan, to shield some mechanical elements from view. The trash enclosure has been reconfigured to redefine the trash to be more presentable that resulted in the loss of a few parking spaces. The sandbar location had a building that was originally at grade has been raised with required permits. Along parking lot 5 they have installed a stockade fence separating the parking lot and the beach. A report he had done August 19, 2021 was revised September 16, 2021 reveals they have addressed his concerns. There was a concern about extra picnic tables being having the ability to be moved around but it appears as if they will have the 60 seats on the septic area and 120 on the beach. This will make it easier to monitor what has been approved rather than a “moving” plan. The original shared parking agreement had been acknowledged in the 2005 resolution; but had been there previous to that. As standard condition

they will need to submit final plans in PDF format for the file. The county is hiring a traffic engineer to further study site triangles and site distances as you come off the bridge.

There was a discussion clarifying the number of employees in season and per shift. How the parking spaces were calculated.

The meeting was open to the public.

Mr. Went previously sworn, representing Dr. Berger and Mrs. Green. Mr. Went refers to an email from our engineer to the Deauville saying, “based on a site inspection the septic field is being used for special events. This area is not permitted to be used for patron space and should be discontinued immediately. Parking and septic analysis would have to be included in the site plan.” Mr. Went has included photos (exhibit B-5) showing that this activity did not stop. The applicant did not comply with the email. It took the issuing of a summons to get the site plan before the board. He does not believe the applicant to be law-biding and considerate to the community. He is concerned about the applicant claiming that there is no more bandstand leading one to believe there will be no music. However, there may be various events that would have music. He believes that those special events will happen more often, than not, essentially the whole summer. If there is to be outside music, he suggests there be a condition to the resolution that the applicant is to use a programmable limiter. This will allow the volume to be capped and adjusted only by someone with a password. His concern with parking is that stacked parking is allowed in residential applications because a homeowner has control, where commercial does not.

Mr. Dietrich explains that the valet plan utilizes existing lots and no street parking.

Ms. D. McCrosson adds that a valet plan had been in effect as referenced in resolution PB05-05 so this is not unprecedented.

Mr. Went points out that in the parking plan there are 30 spots for personal watercraft, and, by law, they are not permitted to be used from sunset to sunrise. He believes they cannot be counted in a parking plan for a business running from 11am to 11pm due to the overlapping time.

He argues this is not an amended site plan, but a site plan application. The applicant has not provided septic analysis or a traffic plan. He wants to know a timeline for removal of port o potty’s and the installation of the sidewalk. Mr. Went questions how often is the septic pumped?

Mr. Modder does not have a specific schedule; he believes every couple of days.

Mr. Went submits exhibits B-1 thru B-8.

Ms. Victoria Green, 2 W. Winthrop, Strathmere, was sworn. She testifies to the distance she lives from the Deauville. She describes the exhibits. B-1 are views from her property. B-2 is an arial view. B-3 shows parking. B-4 truck deliveries. B-5 patron seating on septic field. There is a discussion reviewing exhibits B-6 911 emergency call log from 2020.

Mr. Went expressed the reason to include exhibit B-6 was to show the vast number of calls to 911 shows what can happen with the amount of people in such a setting. He continues with exhibit B-7 the State Police Boating Safety Guidelines showing that personal watercraft cannot be used between sunset and sunrise. B-8 the Deauville proposed seating chart. B-9 is a hawk traffic spreadsheet B-10 email dated 6/10 from the Township Engineer to the Deauville.

Ms. Green states that she loves “The Deauville” but they are not happy with the new management. It feels like mayhem, there is total disregard to what is required. All to maximize

volume of profit at the expense of the community. The capacity has exceeded the infrastructure with regards to the roads, parking, and septic. We do not have the law enforcement support to deal with these issues. There are fights, drinking, vomit and trash. She has never seen an employee removing trash. She wants to be able to enjoy The Deauville, as they once had, but are unable to under this new management. She requests a reduction in volume, parking for employees and noise management.

Ms. Sophia Wisniewski, 10 S Bayview, Strathmere was sworn. Ms. Wisniewski voices strong objection to the approval of the Deauville's site plan. She believes this plan will only exacerbate an already difficult parking problem. People circle around looking for parking with occasional fights for spaces. They do not have enough for staff or patrons. The noise problem is excessive. The problem is still an issue even with windows closed. She has altered her lifestyle in order to avoid excessive noise with detriment to her quality of life. The new ownership has created a different attitude and culture. Strathmere is a tiny place and cannot be the "go to" for all local communities. She pleads that the board does not approve the site plan.

Mr. Indrek Ojamaa, 9 N. Winthrop, was sworn. He agrees with the comments made by Dr. Berger's representative. He doesn't want to see the extra development. He built in 1970's and at that time the existing restaurant had a sign up "35 and older only". He doesn't want to see it go back to that. But the island only has so much room. The parking, noise and the beach bar that now creates a problem with sand that the township has to remove. The smell when the septic is being pumped is awful.

Mr. Ted Kingston, 5 E. Willard Ave, Strathmere was sworn. He believes the Deauville has a credibility problem. When someone comes before the township, they are given the benefit of the doubt, there is an assumption that everyone is acting in good faith. When they first came, the community was ecstatic that a local with the financial resources would be taking over. That good will has been abused. There are at least two versions to every story. They were originally told the bandstand was for 3-piece dinner music but that same evening on Facebook there was a post for a summer beach concert series. If they claim to back down on the music will it be in writing? What can the resolution state?

Mr. Barnes explains that the ordinance permits for music. What the applicant needs to comply with the noise requirements.

Mr. Kingston continues to state that they were told at an SIA meeting that the Deauville is not your enemy. They claim to be attentive listening to the community. They were told by the board, if they wanted to express any grievances, they should go to the township committee meeting for the liquor license hearing. Yet the representatives for the Deauville left immediately after the vote. Before anyone from Strathmere could speak. Mr. Kingston believes this shows that they are not concerned with the community. He thinks some of these small issues could easily addressed but they do not care. The township has bent over backwards to accommodate the Deauville. Even allowing them to dump dredge spoils on the beach. They were told every truck would be monitored. Debris was left all over the beach. Workman were overheard saying "this load is full of shit, timbers and broken glass" That was long after it had blown up at township committee. He believes the Deauville has taken advantage of the township by dumping debris.

Mayor Palombo interjects that the DEP did approve the debris.

Mr. Kingston biggest concern is the noise and how will any conditions be addressed. He does not have faith in the Deauville complying with the terms. If the bandstand is off the site plan yet will actually have music how is it regulated. There is no clarification. He does not believe they have adequate parking to support the business all year round. All the boat slips, personal watercraft,

variances and all the tables in grass in the world can't explain this away. At some point Uncle Bills will be a conflict. He believes the accommodation should be 2 times the number of cars they can fit on their existing parking lots. He is asking the board to protect their town.

Mr. Harney adjourns this session until next month. They will not have to re-notice.

Mr. Riordan and Mr. Kingston have rejoined the board for the resolutions.

RESOLUTIONS – Betty Jane Tocci (Trust)

A motion was made to adopt the resolution by Ms. Janet McCrosson, seconded by Mayor Palombo, and approved.

BILLS

A motion to approve the bills, as submitted, was made by Mayor Palombo, seconded by Mr. McGuire, and approved.

ADJOURNMENT

Motion by Mayor Palombo, and seconded by Ms. McGuire, to adjourn the meeting, with all Board members present voting in the affirmative. The meeting was adjourned at 10:56 p.m.

Submitted by,

Liz Oaks