

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT  
 REGULAR MEETING MINUTES  
 APRIL 5, 2023

The meeting of the Upper Township Zoning Board of Adjustment was held at Township Hall at 2100 Tuckahoe Road, Petersburg. The meeting was called to order at 6:30 p.m.

SUNSHINE ANNOUNCEMENT  
SALUTE TO THE FLAG  
ROLL CALL

Member	Attendance
James Burger, Alt #1	Present
Paul Casaccio, Chairman	Present
Sherrie Galderisi	Present
Tom Jackson Alt #2	Present
Richard Mashura	Absent
Lynn Petrozza	Present
Christopher Phifer	Present

Member	Attendance
Donald Rainear Alt #3	Present
Andrew Shawl	Present
Matthew Unsworth	Absent
Hobie Young, Alt #4	Present

Also, in attendance were Jeffrey Barnes, Board Solicitor, Paul Dietrich Township Engineer and Liz Oaks, Board Secretary and Zoning Officer.

APPROVAL OF THE MARCH 9, 2023 MEETING MINUTES

A motion to approve the minutes was made by Ms. Galderisi and seconded by Mr. Jackson.  
 In Favor: Burger, Galderisi, Jackson, Phifer, Young, Casaccio.  
 Abstain: Petrozza, Rainear, Shawl

Paul Dietrich, Township Engineer and Liz Oaks, Board Secretary were sworn.

**RESOLUTIONS**

Doran, Nathan – BA 27-2022

A motion to approve the resolution was made by Mr. Shawl, seconded by Ms. Galderisi  
 In favor: Burger, Galderisi, Jackson, Phifer, Young, Casaccio.  
 Abstain: Petrozza, Rainear, Shawl

Cape May County Herald Supplemental Official Newspaper – ZB SP 02-2023

A motion to approve the resolution was made by Mr. Shawl, seconded by Mr. Burger.  
 In favor: Burger, Galderisi, Jackson, Phifer, Young, Casaccio.  
 Abstain: Petrozza, Rainear, Shawl

**BILLS**

A motion to pay the bills as presented was made by: Mr. Jackson and seconded by Mr. Petrozza.  
 All in favor.

A motion to appoint Mr. Shawl as acting Chairperson as Mr. Casaccio steps down due to conflict was made by Ms. Galderisi, seconded by Ms. Petrozza.

In favor: Burger, Galderisi, Jackson, Petrozza, Phifer, Rainear, Shawl, Young, Casaccio.

## **APPLICATIONS**

### **1. HOLT, RALPH & DEANNA – BLOCK 652.01 LOT 19– BA 05-2023**

Applicant is seeking a site plan waiver with a use variance for the expansion of a non-conforming use for a second floor two-bedroom apartment at 121 Tuckahoe Road, Marmora, New Jersey. (Commonly known as Ralph's Bagels and Deli)

Ralph Holt, 121 Tuckahoe Road, was sworn.

Mr. Holt submitted two documents as exhibits.

- 1- Exhibit A-1 - "D" Variance Requirement – "Special Reasons"
- 2- Exhibit A-2 - Copy of the front page of the property Deed

Mr. Holt testified that he wanted to use the second floor of his bagel shop as a two-bedroom apartment. When he first acquired the property, he didn't have enough money to do anything with the second floor and used it for storage. He went on the open the business downstairs. Throughout the years he tried to expand the business by putting additional seating upstairs. Some of the neighbors had come out against the expansion. He then thought the best thing to do would be to use it for what it was originally approved for, which was an apartment. He doesn't believe there would be any detriment to the neighbors. He believes it will make the property more conforming. He submitted a list of special reasons to support his application, labeled Exhibit A-1. Within this document he focused on the following:

Letter D: By adding an apartment on top of his bagel store, they can make sure the growth of the town doesn't interfere with the growth and general well-being of nearby towns. Making better use of the infrastructure and space they have. It helps reduce the need for new buildings. And can help protect open space.

Letter J: This can help conserve energy and valuable natural resources. In terms of promoting the conservation of historic sites and districts, incorporating the design of the apartment to match the historical character of the building can aid in the preservation of the surrounding area's integrity. He has sufficient parking with 29 spaces. His septic and water are acceptable.

Mr. Dietrich – The ordinance requires one space for every 30 feet, requiring 23 spaces to cover downstairs and the apartment requires 2 spaces. A total of 25 is required. He had 36 spaces previously approved, providing ample parking.

Mr. Young – He investigated the need for rental units in the Township and believes there is a need for them. Mixed use is required in the MTC zone.

Ms. Petrozza – She would like to see the unit as a COAH unit.

Mr. Holt is not very familiar with that but believes it would lower the value of his property and is not interested in that.

Mr. Jackson questions safety with parking and lighting.

Mr. Dietrich – If you look at the landscape and lighting plan you will see where the stairs are located at the right rear of the building.

Mr. Holt – The stairs lead to a backyard area away from the parking lot with a concrete area and there is a fenced in area.

Mr. Dietrich – It will have to go through the construction office for a change of use.

Mr. Holt – Believes that the application can be granted without detriment to the neighbors. He stated that the addition of the apartment will make it more conforming to the residential area. There are other similar structures with commercial on the first floor and residential on the second floor. The proposed residential unit is conforming with the existing residential zone, therefore no detriment to the zone plan. There will be no detriment to the public good because there will be ample parking.

The meeting was open to the public.

Wayne Jack, 115 Tuckahoe Road, was sworn. Mr. Jack believes the applicant has already been using the second floor as an apartment for a month. He is also concerned about the upkeep of the landscape buffer that has died and the fencing that is in disrepair.

Mr. Dietrich – This species of trees are suffering throughout the Township. The loss is not due to negligence. They are already in communication with the applicant on how to move forward with the landscape buffer. Code enforcement would be responsible for the fencing.

Deborah Phillips, 31 S. Old Tuckahoe Road, was sworn. Ms. Phillips is in favor of the application.

Crystal Holt, 155 Tuckahoe Road, was sworn. Ms. Holt is in favor of the application. She testified that the vehicles Mr. Jack believes belong to tenants are vehicles that belong to people she has working on her property two houses away.

Keith Jack, 48 Stagecoach Road, was sworn. Mr. Jack is concerned about the unit being rented out as an Air B&B and being rented to 20 college kids. He does not believe the applicant will comply with the approval.

Mr. Dietrich – There is a proposed ordinance that would not permit short term rentals in this zone.

There was a brief discussion about the proposed ordinance and any time frame.

Wayne Jack, previously sworn, expressed concern about a second exit and fire safety.

Mr. Holt testified that he spends about \$2,000 a year to have the fire inspector come out and inspect the whole property. He wouldn't be able to operate without being compliant with the Construction Code.

Mr. Dietrich confirmed that it would be up to the construction department to make sure the property was up to code.

Hearing no one else, seeing no one else, the public portion was closed, and the meeting returned to the board for findings of fact.

Mr. Phifer - The applicants, Ralph and Deanna Holt, are seeking a “D” variance for the expansion of a non-conforming use for a second floor two-bedroom apartment at 121 Tuckahoe Road, Marmora, New Jersey. (Commonly known as Ralph’s Bagels and Deli). In 1996 the property had been previously approved for a second-floor apartment. The applicant has been before the board before regarding this property. The applicant lists special reasons under 40:55D-2 b, d, e and k that he believes applies to this property. He also believes 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. There was public comment from people within 200’, Wayne Jack, he believes there may be people living there now. He questioned trees dying but Mr. Dietrich explained there was a blight on this species and the applicant is working with Mr. Dietrich to resolve this issue. There were two people that testified that were in favor of the application, Deborah Phillips and Crystal Holt. Another objection to the application was Keith Jack. His main concern was Air B&B. There was some discussion about the proposed ordinance. The property is located in a residential zone and adding an apartment would make it more conforming. There was also discussion about the safety of the property. The applicant stated he was not interested in making the unit a COAH unit. It would not be financially advantageous. The construction office will have to inspect and approve the apartment. There will be no separate utilities.

Mr. Jackson – Nothing to add.

Ms. Petrozza – Added the applicant included special reason “j” on his form. (Exhibit A-1)

Mr. Burger – Nothing to add.

Mr. Young – This application is essentially reverting to what was originally approved. He believes that adding a rental unit to the Township is an inherently beneficial use. The bagel shop is open in the morning and closes in the afternoon and believes this will be a low intense use. He has no problem with the application.

Ms. Galderisi – Nothing to add.

Mr. Phifer – Nothing to add.

Mr. Rainear - Nothing to add.

Mr. Shawl – Mr. Holt testified that it is two-bedroom and one bath. Mr. Dietrich stated they needed two parking spots for the apartment and there was sufficient parking for both uses. Mr. Holt provided testimony that this would be like other development in the same neighborhood with mixed use being down the street. There is an outside set of stairs with a separate entrance. The fire control system is inspected for commercial use.

A motion to approve the application with the condition of the deed restriction with the approved resolution was made by Mr. Jackson and seconded by Mr. Phifer.

In favor: Burger, Galderisi, Jackson, Petrozza, Phifer, Rainear, Shawl

**3. SARIAN, STEPHEN – BLOCK 567 LOT 55.13 – BA 06-2023**

Applicant is seeking a bulk variance for impervious coverage of 26% where 20% is permitted to construct a pool with a patio at 17 Queen Anne Court, Palermo, New Jersey.

Stephen Sarian, 17 Queen Anne Court, was sworn.

Mr. Sarian testified that he and his family have been in the township for two generations. He is building his dream backyard. The 26% he is requesting would have been compliant under the past zoning which allowed 30%. The project is for a pool and decking around it. It isn't an eyesore and is appropriately located in the backyard. There is an easement that he has not encroached on to allow the township easy access.

Mr. Dietrich – The applicant has asked many questions and has investigated this thoroughly.

The meeting was open to the public. Hearing no one and seeing no one the public portion was closed and the meeting returned to the board for findings of fact.

Mr. Phifer – The applicant, Stephen Sarian, is seeking a bulk variance for impervious coverage of 26% where 20% is permitted to construct a pool with a patio at 17 Queen Anne Court. This is a simple application with only the one variance.

Mr. Jackson – He is in favor of the application.

Ms. Petrozza – There was no testimony from the public. She believes others on the street have similar pools, so it isn't a detriment to the public good and not affecting the zoning. She is in favor of the application.

Mr. Burger – There is a basin in the applicant's backyard if there was any concern about runoff. He is in favor of the application.

Mr. Young – He is in favor of the application.

Mr. Rainear - Nothing to add.

Ms. Galderisi – She is in favor of the application. She noted that the applicant asked many questions during the process and is appreciative of that.

Mr. Shawl – The applicant represented himself.

A motion to approve the application was made by Mr. Jackson and seconded by Ms. Galderisi. In favor: Burger, Galderisi, Jackson, Petrozza, Phifer, Rainear, Shawl

**4. RIHL, AMY – BLOCK 686 LOT 1 – BA 08-2023**

Applicant is seeking variance relief for front yard setback to construct an addition at 741 Steel Road, Marmora, New Jersey.

Amy Rihl, 741 Steel Road, was sworn.

Ms. Rihl testified that they are requesting a variance for a front yard setback of 15' where 50' is required. The property is located on a corner creating two front yards. They want to replace the existing deck and shower with a 400 sq ft addition that will include a new kitchen. They do not intend to replace the deck.

Mr. Young questioned whether undersized lots used a sliding scale for the front yard.

Mr. Dietrich explained the sliding scale is for the side and rear yards only. They can use the adjacent structure but in this case that property is using South Drive as the front yard, so they have more frontage. The applicant uses Steel Road as the front yard. All the houses in this area are close to the street in one way or another.

The meeting was open to the public. Hearing no one and seeing no one the public portion was closed and the meeting returned to the board for findings of fact.

Mr. Phifer – The applicant, Amy Rihl is seeking a variance for a front yard setback of 15' where 50' is required to construct a 400 sq ft addition. The property is located on a corner creating two front yards, therefore, making one of the setbacks non-conforming. The neighborhood is consistent with non-conforming setbacks. The addition will contain a kitchen. They will remove the old deck and shower area. He is in favor of the application.

Mr. Jackson – Any time you can expand your existing home to make it more comfortable rather than move is a plus. He is in favor of the application.

Ms. Petrozza – There was no testimony from the public. The improvement seems consistent with the neighborhood. There is no detriment to the zoning ordinance or the public. She is in favor of the application.

Mr. Burger – He is in favor of the application.

Mr. Young – He is in favor of the application.

Mr. Rainear - Nothing to add.

Ms. Galderisi – She agrees with her peers and is in favor of the application.

Mr. Shawl – The applicant represented herself.

A motion to approve the application was made by Ms. Petrozza and seconded by Ms. Galderisi. In favor: Burger, Galderisi, Jackson, Petrozza, Phifer, Rainear, Shawl

### **PUBLIC PORTION**

### **ADJOURNMENT**

A motion to adjourn the meeting was made by: Ms. Galderisi, seconded by Mr. Jackson. All in favor. The meeting ended at 7:58 pm.

Submitted by,

Liz Oaks