

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
JANUARY 11, 2024

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	Absent
Richard Mashura	Absent
Lynn Petrozza	Present
Christopher Phifer	Present

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

Also, in attendance were Jeffrey Barnes, Board Solicitor, Joseph Iudica, Substitute Board Engineer and Liz Oaks, Board Secretary and Zoning Officer.

REORGANIZATION

The board secretary asked for nominations for Chair. A motion was made by Ms. Petrozza and seconded by Mr. Phifer to nominate Paul Casaccio as Chair. Hearing no further nominations, the nominations were closed.

In favor: Burger, Galderisi, Petrozza, Phifer, Shawl, Young
PAUL CASACCIO ELECTED CHAIRMAN FOR 2024

Mr. Casaccio asked for nominations for Vice Chair. A motion was made by Mr. Phifer and seconded by Ms. Petrozza to nominate Matthew Unsworth as Vice Chair. Hearing no further nominations, the nominations were closed.

In favor: Burger, Galderisi, Petrozza, Phifer, Shawl, Young, Casaccio
MATTHEW UNSWORTH ELECTED VICE CHAIRMAN FOR 2024

Mr. Casaccio asked for nominations for Board Solicitor. A motion was made by Ms. Galderisi and seconded by Ms. Petrozza to nominate Jeffrey Barnes, Esquire, as Board Solicitor. Hearing no further nominations, the nominations were closed.

In favor: Burger, Galderisi, Petrozza, Phifer, Shawl, Young, Casaccio
JEFFREY BARNES OF BARNES LAW GROUP ELECTED BOARD SOLICITOR 2024

Mr. Casaccio asked for nominations for interim Board Engineer. A motion was made by Mr. Shawl and seconded by Ms. Galderisi to nominate Kates Schneider as substitute Board Engineer/Planner. Hearing no further nominations, the nominations were closed.

In favor: Burger, Galderisi, Petrozza, Phifer, Shawl, Young, Casaccio
KATES SCHNEIDER ELECTED SUBSTITUTE BOARD ENGINEER FOR 2024

Mr. Casaccio asked for nominations for Board Secretary. A motion was made by Mr. Shawl and seconded by Ms. Galderisi to nominate Liz Oaks as Board Secretary. Hearing no further nominations, the nominations were closed.

In favor: Burger, Galderisi, Petrozza, Phifer, Shawl, Young, Casaccio

LIZ OAKS ELECTED BOARD SECRETARY FOR 2024

Mr. Casaccio asked for nominations for the official board newspaper. A motion was made by Ms. Galderisi and seconded by Mr. Phifer to utilize the Sentinel Ledger as the primary official newspaper and The Press of Atlantic City as the secondary official board newspaper.

In favor: Burger, Galderisi, Petrozza, Phifer, Shawl, Young, Casaccio

THE SENTINEL LEDGER AND PRESS OF ATLANTIC CITY ELECTED OFFICIAL NEWSPAPERS FOR 2024

OATH OF OFFICE

All members in attendance take the official oath of office.

APPROVAL OF THE DECEMBER 14, 2023 MEETING MINUTES

A motion to approve the minutes was made by Mr. Phifer and seconded by Ms. Galderisi.

In favor: Burger, Galderisi, Petrozza, Phifer, Shawl, Young, Casaccio

TABLED APPLICATIONS

Bruenig, Robert – Block 453 Lot 171.02 – BA 17-2023

Applicant is seeking site plan approval to construct a 2,250 square foot garage where former approval was for a 20,000 square foot building. Proposed storage yard use is to be continued as the previous use variance was granted at 170 Route 50 in Petersburg.

This application has been tabled to the February 1, 2024 meeting at 6:30 pm. No further notice on this application.

Atlantic Cape Builders, LLC Block 348 Lot 83.01 – BA 28-2023

Applicant is seeking variance relief for lot area and lot frontage with a use variance to permit residential use in the CM4 zoning district to construct a one story, single-family dwelling at 1611 Route 50 in Tuckahoe, New Jersey.

This application has been tabled to the February 1, 2024 meeting at 6:30 pm. No further notice on this application.

Joseph Iudica and Liz Oaks were sworn.

NEW APPLICATIONS

Michael Butterfield Block 559 Lot 21.06 and 21.09 – BA 29-2023

Applicant is seeking variance relief for lot area, lot frontage, lot width, front yard setback, along Argoe Drive, side yard setback, building coverage, impervious coverage, number of parking spaces with a use variance for the expansion of a non-conforming use, where retail is not a permitted use within the R2 zoning district to construct a building addition to connect the two buildings and continue business operation from one

contiguous building and to construct a 30'x40' storage building at 3075 Route 9 South in Seaville, New Jersey.

John Amenhauser, Esquire, representing Michael Butterfield. The subject property is located at 3075 Route 9 South in Seaville also known on the tax map as block 559 lot 21.06 and 21.09. It is in the R2 Zone or Moderate Density Residential. The dimensions of the lot are 80'x200' or 16,000 square feet. The site currently operates a pre-existing, non-conforming retail use known as Land and Sea Furniture. There is a two-story frame building on lot 21.06 and a one-story frame building on lot 21.09. The applicant proposes an addition by connecting the two-story and one-story structures. And to construct a 30'x40' storage building in the rear of the property which will be accessed by a proposed drive aisle off of Argoe Drive as shown on the plan.

Michael Butterfield, applicant, 33 Fishing Creek Road, Cape May Court House, was sworn.

Steven Filippone, Engineer with EDA, 5 Cambridge Drive, was sworn.

Mr. Butterfield – The property is located on Route 9 on the corner of Argoe. It was once an unfinished furniture store. They have occupied the space for 10 years. There was also previously the old Seaville Auto Repair that he purchased in 2014 and rented out. Land and Sea is being operated out of what they call, the barn. They are currently storing items in the garage. They hope to clean the site up if approved. The majority of what they do is outdoor furniture with only a small amount being indoor furniture. These pieces are an investment for most. The customer has put in some research and generally know what they are looking for. They have some inventory in the store but much of what they do is custom ordered. There are 9 parking spots on site. It is rare to see more than 2-3 people in the shop. They rarely get people randomly driving by and stopping in, most are people that have looked at the website and called in advance. Many cases are done completely on the phone, and they won't even see until delivery. The current parking is sufficient. They expect to a lot of clean up with the outdoor display. They are aware they are the first commercial property in Upper Township when coming into town from Dennis Township. They believe the old barn predates the Civil War and want to keep this look and feel. The hatched area on the plan is where the proposed display would be. An accessory building is proposed for the storage of inventory.

Mr. Young – These are two lots.

Mr. Amenhauser agrees to consolidate the lots.

Mr. Burger points out a septic lid in the rear that looks like it is in an area that may be used for parking. Is there ever a concern about driving over it?

Mr. Butterfield – He is aware of it. There shouldn't be any public or customers driving out there. But it isn't in a location that anyone can actually drive over it.

Mr. Shawl – This isn't the first time you have come before the board for variance relief. And there has been improvement. Can you please explain how they handle trash. There used to be two uses and now there is one. He asks for more information about hardscape and landscape. And what are the hours of operations.

Mr. Butterfield – There is currently one dumpster in the rear they would like to enclose. They plan to improve both hardscape and landscape. The hours of operation in the winter are Monday through Friday 10:00 am to 4:30 pm and Saturday 9:00 am to 2:00 pm. In the summer they go to 5:00 pm and in the spring, between Easter and Memorial Day, they go to seven days a week but in the summer, they usually go back to closing on Sundays.

Mr. Filippone – Describes the current conditions as being unorganized. They want to clean up the frontage and the site. They want to create and designate nine parking spaces and include a handicapped stall that will meet all county, state and federal requirements. Cut back and clean up display. They want to create some green space with landscape buffers on the sides and around the signs. They will be removing some stone and asphalt. They will create 24' wide drive aisles that will be clearly defined. They propose grass in the Route 9 right of way. In the rear of the site, they propose a 1,200 square foot storage building not to exceed 20' in height. This is the R2 zone but pre-dates zoning. The structures have been there, with a commercial use, about 50 years. The landscaping plan is designed for four seasons providing an aesthetic enhancement. The property has some pre-existing, non-conformities. The zone requires 40,000 square feet. One lot is about 16,000 and the other is about 15,000 when combined they will be just over 32,000 square feet. While the consolidation does not meet the standard, the consolidation of the two bring it closer to conformity.

Mr. Filippone - For the purposes of zoning under the municipal land use law he believes the proposed will be either enhanced or promoted by granting the variances.

He lists 40:55-D2

i – To promote a desirable visual environment through creative development techniques and good civic design and arrangement. The landscape plan proposed is providing this.

g – To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial, and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens. They are in a R2 zone, but this commercial use predates zoning.

a – To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare. They will be consolidating the lots.

Mr. Filippone sees no detriment to the public good, the zone plan or zoning ordinance. Historically the site works well. The owner is highly vested in the property. The proposed plan enhances the aesthetics and will improve traffic flow. The owner has a good relationship with the neighbors and is eager to make this fit in with the residential aspect

of the location. He believes this site is specifically suited for the use due to the history and the size of the lot works well for the commercial use.

Mr. Young – Notes the importance of keeping the landscaping in the site triangle no higher than 3 feet tall.

Mr. Iudica – Is there a lighting plan?

Mr. Filippone – They plan on evaluating the lighting. They may add some low-level lighting. No lighting will be leaving the property and will be appropriately shielded.

Mr. Casaccio added that this business does not generally operate at night.

Mr. Butterfield agreed with that and explained that is why they close at 4:30 pm in the winters.

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

Mr. Shawl – The applicant, Michael Butterfield, has come before the board for his property at 3075 Route 9 South in the Seaville section of Upper Township also known on the tax map as block 559 lots 21.06 and 21.09. The applicant currently operates two buildings at this location and sells high end outdoor furniture. The applicant is proposing 9 parking spaces where 19 are required. He is proposing outside display areas for the outdoor furniture he sells to the public. He is creating green space to improve the character and the aesthetic of the site. The applicant proposes to install a stone driveway off Argoe Drive and a 20'x30' storage building less than 20' tall. The current site is two buildings that sell outdoor furniture that they will be connecting. EDA provided the landscape plan specifically designed to enhance the visual environment. The applicant has been before the Upper Township Zoning Board previously. The hours of operation are Monday through Friday 10:00 am to 4:30 pm in the winter and 9:00 am to 2:00 pm on Saturdays. In the spring they will be open 7 days a week and will be open until 5:00 pm when the sunset is later. The site improvements will delineate 24' wide drive aisles with 9 stalls for parking. We heard testimony from the owner that 9 stalls is sufficient parking for business he gets. He is asking for the expansion of a non-conforming use in a residential zone, however, the commercial use of this site pre-dates zoning. One may conclude logically that it is a suitable site for this type of operation.

We heard testimony from the engineer there are 3 special reasons that are being advanced. He lists 40:55-D2

- i – To promote a desirable visual environment through creative development techniques and good civic design and arrangement. The landscape plan proposed is providing this.
- g – To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial, and industrial uses and open space, both public and

private, according to their respective environmental requirements to meet the needs of all New Jersey citizens. They are in the R2 zone, but this commercial use predates zoning.
a – To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare. They will be consolidating the lots.

We heard testimony there was no detriment to the zone plan or the public health. The site is suitable since it has been an existing commercial site for decades. There was no public comment. There was discussion about low-level lighting. If there is any additional lighting, they will submit to the board engineer for review. He concurs with the testimony that they heard with the 3 special reasons and their relevance. He does not believe there will be any detriment to the public good or the zone plan because of the long use of the site. This is not the first time the applicant has come before the board and has been generally compliant in the past. He believes the variances can be granted.

Mr. Amenhauser – There is a waiver they are requesting that hasn't been addressed. The proposed drive aisle to the rear storage building. They are proposing stone where asphalt would be required. They believe it is justified because it has a more residential feel.

Ms. Petrozza – Concurs with her colleagues. She believes the benefits outweigh any detriments. She is in favor of the application.

Mr. Burger – Considering the location he believes the neighbors will appreciate the improvements. He is in favor of the application.

Mr. Young – He concurs with Mr. Shawl. The application will have minimal impact. He is in favor.

Mr. Phifer – The applicant will be adding an ADA compliant parking spot.

Ms. Galderisi – Concurs. She is happy with the feel of the plan and the attempt to preserve the historical value.

A motion to approve the application with the waiver, the variances and the deed of consolidation was made by Mr. Young and seconded by Ms. Galderisi.

In favor: Burger, Galderisi, Petrozza, Phifer, Shawl, Young, Casaccio

Modder, Adam Block 453 Lot 240.08 – BA 30-2023

Applicant is seeking a variance for building coverage of 8.45% where 8% is permitted for their single-family dwelling at 21 Meghan Lane in Seaville, New Jersey.

Jonathan McCrosson, Esquire for the applicant, Adam Modder. The property is located at 21 Meghan Lane in the Seaville section of Upper Township also known as block 453 lot 240.08 within the R2 district on the zoning map. The applicant constructed a single-

family home on this property. They are seeking a variance for building coverage. Upon completion of the home, it was realized it exceeded the building coverage by 0.45% or 180.68 square feet. They have received a temporary C/O and are living in the home. To get the final C/O they need to get a variance for the non-conforming condition of 180.68 square feet or reduce the size of the home by that amount. The testimony will show that the relief can be granted due to the di minimis nature. The small non-conformity is consistent with the existing development of the neighborhood. The setbacks and impervious coverage are all in compliance. This is not a situation where the home is too large for the lot or the neighborhood therefore meeting the positive and negative criteria. This is all shown on the survey.

Adam Modder, 21 Meghan Lane, was sworn.

Mr. Modder – This is a newly constructed home. They hired a builder and was not the general contractor. They intended to build a home that was conforming. It wasn't until after the construction they realized there was a problem. He does not see a way to make the home compliant. The home is consistent in size with other homes in the neighborhood.

Mr. Young questioned the difference between the R zone and R2 zone coverage difference.

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

Mr. Shawl – The applicant, Adam and Erica Modder, comes before the board regarding their property at 21 Meghan Lane in the Seaville section of Upper Township also known as block 453 lot 240.08 on the tax map. The applicant built a single-family home on this buildable lot. After the home was built they discovered the building coverage was 8.45% where 8% is required. We heard testimony from Mr. Modder that his intention was to build a home that was consistent with the neighborhood. The percentage over equals 180.68 square feet. There is no easy way to remove the overage. There are some porches, but they are consistent with homes in the neighborhood. There was a discussion that if this were in the R zone, they would be allowed 10% which would alleviate the need for a variance where the R2 zone only allows 8%. He believes there is no damage to the public health. It is a single-family house on a single lot. The lot is standard size, the house is just a little larger than the zone allows. It is not as big as other homes in the neighborhood, and it isn't as small as other homes in the neighborhood. He doesn't see any problem with the zone plan granting the variance and no detriment to the public health. The benefits to the homeowner and to the community to have a beautiful home that conforms with the character of the neighborhood outweigh the detriment of not exactly meeting the requirement of 8%.

Ms. Petrozza – Concurr.

Mr. Burger – Nothing to add.

Mr. Young – Nothing to add.

Mr. Phifer – Nothing to add.

Ms. Galderisi – Nothing to add.

Mr. Casaccio – There was no public comment.

Mr. Iudica – Nothing to add.

A motion to approve the application was made by Ms. Petrozza and seconded by Ms. Galderisi.

In favor: Burger, Galderisi, Petrozza, Phifer, Shawl, Young, Casaccio

DISCUSSION

Summary of 2023 Zoning Board of Adjustment Applications

After a brief discussion of the 2023 applications the following items are going to be forwarded to the planning board.

- Why does the R2 Zone have an 8% coverage and the R Zone a 10% coverage and when did this happen.
- Re-visit the undersized lot criteria.
- Floor Area Ratio for existing structures.

A resolution will be presented for approval at the next Zoning Board Meeting.

RESOLUTIONS

Jersey Shore Campground, LLC – BA 26-2023 A motion to approve the resolution was made by Mr. Phifer and seconded by Ms. Galderisi.

In favor: Burger, Galderisi, Petrozza, Shawl, Young

Abstain: Phifer, Casaccio

Jeffrey and Kathleen Dilks - BA 27-2023

A motion to approve the resolution was made by Mr. Phifer and seconded by Ms. Galderisi.

In favor: Burger, Galderisi, Petrozza, Shawl, Young

Abstain: Phifer, Casaccio

Agreement with Kates Schneider as Interim Board Engineer

A motion to approve the resolution was made by Mr. Phifer and seconded by Mr. Hobie.

In favor: Burger, Galderisi, Petrozza, Phifer, Shawl, Young, Casaccio

Agreement with King-Barnes Law Group

A motion to approve the resolution was made by Mr. Phifer and seconded by Ms. Galderisi.

In favor: Burger, Galderisi, Petrozza, Phifer, Shawl, Young, Casaccio

BILLS

A motion to pay the bills as presented was made by: Ms. Petrozza, seconded by Ms. Galderisi.
All in favor.

Joe Iudica leaves the meeting as we proceed with discussions about the board engineer position.

ENGINEER POSITION UPDATE

Ms. Petrozza explained there were two candidates to interview. She explained both candidates were good options, but she and the sub-committee agreed unanimously that Kates Schneider would be a better fit for the board and the applicants. They are a local firm with knowledge of the township. They are eager to work with both large and small applications. They are experienced with municipalities such as Municipal Engineer in Somers Point. They are a smaller firm, and their fees should not be as high as some of the larger firms. For these reasons, it is the sub-committee's recommendation that Kates Schneider be chosen as the board engineer.

There was a brief discussion among the board members resulting with the following motion.

A motion to nominate Kates Schneider as board engineer and approve the resolution was made by Ms. Petrozza and seconded by Mr. Burger.

In favor: Burger, Galderisi, Petrozza, Phifer, Shawl, Young

Abstain: Casaccio

ADJOURNMENT

A motion to adjourn the meeting was made by: Ms. Galderisi, seconded by Mr. Phifer.
All in favor. The meeting ended at 7:55 pm.

Submitted by,
Liz Oaks