

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
 REGULAR MEETING MINUTES
 SEPTEMBER 7, 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	Present
Lynn Petrozza	Present
Christopher Phifer	Absent

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, Greg Schneider, Substitute Township Engineer and Liz Oaks, Board Secretary and Zoning Officer.

Greg Schneider and Liz Oaks were sworn.

APPROVAL OF THE AUGUST 10, 2023 MEETING MINUTES

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

TABLED APPLICATIONS

115 ROUTE 50 ASSOCIATES, LLC – BLOCK 549 LOT 3 – BA 12-2023

Applicant is seeking a use variance and preliminary and final site plan approval with variances for impervious coverage of 58.8% where 50% is required, tree preservation of 9.3% where 15% is required, accessory structure in a front yard, a sign of 80 sq ft where 32 sq ft is permitted and a 5 ft setback of a sign where 20 ft is required for an outdoor storage facility at 115 Route 50, Seaville, New Jersey. This application has been tabled to the October 5, 2023 meeting.

NEW APPLICATIONS

WOLFE, JUDITH – BLOCK 757 LOT 3 – BA 14-2023

Applicant is seeking a use variance for Floor Area Ratio, bulk variances for side yard setback and maximum building coverage to construct a third-floor addition to an existing two-story single-family dwelling at 2712 Bayview Drive, Strathmere, New Jersey.

Avery Teitler, Attorney for the applicant, the property is located at 2712 Bayview Drive which is the resort residential zone or RR zone. There is an existing single-family dwelling on a very narrow lot. They propose to remove an existing rear deck and add third floor habitable space.

There are many variances required, a south-side yard setback, FAR, maximum building coverage, total stories, and rear yard setback. All these variances are a result of a pre-existing, non-conforming conditions and a direct result of the lot being undersized. The required lot size in this zone is 4,000 square feet and this lot is 2,088 square feet. There are no adjacent lots available to make the lot compliant. This creates a hardship making a conforming renovation very difficult. The requested variances can be granted under the C2 or Flexible criteria. There will be an aesthetic improvement. Restoring additional parking space creating additional light, air, and open space. Complying with DEP regulations which the property presently does not comply with. The testimony and evidence will indicate the site can accommodate the proposed FAR and that there are no associated problems to prevent the approval of the variance. The positive aspects of granting this application outweigh the negative aspects. The testimony and evidence will indicate there is no substantial detriment to the public good. Granting the variance will not substantially impair the intent of purpose of the zoning plan and zoning ordinance.

John Halbruner, Project Engineer and Architect with The Hyland Group, 701 West Avenue, Ocean City, was sworn as an expert.

Mr. Halbruner explained the property was purchased in 2007. A fishing bungalow that was damaged in the 2012 Sandy Hurricane. It had been restored and was being raised from that damage when it suffered a fire around 2013-2014 and nearly destroyed. It is a narrow bay front lot. The original bungalow did not conform with the setbacks. During the rehab from the fire the applicant received a stop work order from the construction office. The project they proposed required board approval. During the application process the neighbor had requested they not add a particular side element of the structure, that was approximately 4' x 12', due to the proximity to their property. The applicant agreed to relocate this element to the rear of the property. In 2016 the board granted that approval. In 2021 the DEP considered this a violation because it was over the mean high-water line. What they had done to appease the neighbor has resulted in a problem with the DEP.

Mr. Halbruner references exhibit 1 in the submitted packet and describes the areas in red are to be removed and the areas in green, within the footprint, proposed to accommodate the removal. In attempt to rectify the situation they will lose 50 square feet from one bedroom, making it unusable. By adding the space on the third floor they are replacing the bedroom lost. When the reconfiguration is complete, they will remain a two bedroom, two bath house. The intensity of the living space does not change. While the FAR does go up, there is not an increase in bedrooms or bathrooms.

Mr. Halbruner testified that the FAR permitted in this zone is 54% which would equate to a 1,128 square foot structure, a modest structure in any township in any zone. What currently exists is 57%. They propose 72% or 1,498 square feet. While this sounds like a lot, it is a mere 310 square feet. The determining of FAR is specific to the intensity of use and mass. The intensity does not change as it is still a two-bedroom. The mass does not change much. The visual change from the street is minimal. The light, air, and open space are improved. The views along the water will be enhanced by the removal. They are constrained by the upland and the size of the lot is extremely undersized. The side yard setbacks are pre-existing, non-conforming and will remain the same on the existing lower level. By enclosing the upper level, they are technically aggravating the setback and requires a variance. The building coverage permitted is 22%, existing is 34.29% and proposed is a decrease of 2.16% to 33.13%. the southerly neighbor concerns are proximity and windows. There are no windows. His water view will improve. The property is in a secluded section of the town. Impervious coverage is unchanged. The zoning schedule they provided notes

the maximum height of 35' is based on a pitched roof. The maximum height for a flat roof is 31'. The existing roof height is just over 27' but the railing for the roof top deck exceeds the allowed 31'. This is pre-existing, non-conforming and will not be changing. There will be two conforming parking spaces. Per ordinance the number of stories is limited to two. This is creating 3rd floor living space requiring a variance for three stories.

Mr. Halbruner testified that he believes the variances can be granted under the C1 or hardship criteria for many reasons. The extremely undersized lot and a prior agreement that never should have been done. He believes there are several purposes of zoning to grant the variances under the C2 or flexible criteria. The benefits are creating light, air, and open space by removing the addition from the back of the house, that was an obstruction, which increase the views up and down the bay. This also complies with the DEP regulations. As part of the renovation, they will be raising the bulkhead. They are also restoring one parking space creating two valid parking spaces. He believes the neighborhood will benefit from the removal of the rear addition in exchange for an imperceptible addition in the front. He believes there is no substantial detriment to the public good due to the scope of work being proposed. The area is lower density than most of Strathmere. With respect to the FAR; there is no increase in intensity. What potential detriments there could be, do not apply to this application. He believes the benefits outweigh any detriments. The negative criteria have been met, in his opinion.

Mr. Young asked for clarification of roof height including railing. He also asked about a solid wall on the diagram.

Mr. Halbruner confirms 31 feet and 7 ¾ inches with railings that he assumes are 36". It is possible they are taller, but they are not being changed in any way. He explained there is not a solid wall, but a screen with spindles.

Mr. Burger questioned whether this was an addition of a 3rd floor.

Mr. Halbruner – Yes. What looks like a 3rd floor was space above the kitchen which led to an open deck.

Mr. Jackson confirmed they are creating a bedroom over the kitchen.

Mr. Rainear – You are creating three habitable floors, which the ordinance does not allow. You are removing the waterfront bedroom per DEP regulations. He asks for better clarification of the diagrams. Mr. Halbruner, Mr. Barnes, and Mr. Mashura explain using the diagrams. He wants to know if the third habitable floor requires an extra variance.

Mr. Halbruner – The height with the railing could be just over 32'. It is pre-existing, non-conforming.

Mr. Barnes – It would be a C Variance.

Mr. Halbruner – For clarification, they are creating the 3rd floor under an existing deck. There will be no increase in height. It is all within the existing footprint.

Mr. Shawl – Were the previous non-conformities granted with the previous approval?

Mr. Halbruner – Previously granted in the 2016 approval would include:

1. Front yard setback
2. Rear yard setback
3. Building coverage
4. Lot coverage
5. Side yard setback, both north and south
6. Lot area
7. Lot width
8. Lot frontage
9. Authorization to not install curb and sidewalk

Mr. Rainear – FAR was not a requirement in 2016. Does knowing the 3rd floor is not permitted as habitable space by ordinance change Mr. Halbruner’s opinion? Many people would like a 3rd floor.

Mr. Halbruner – No, this does not change his opinion. This application does not increase the intensity. There will not be more people, more parking or more noise. The increase is 300 square feet and does not include the addition of a bathroom or a bedroom. The increase in mass is imperceptible.

Mr. Schneider – Noted that the rooftop deck area is greater than 25% and with railings that exceed the maximum of 18” of exposed railings, both of which are pre-existing but not mentioned in the resolution. He recommended adding both to the zoning chart.

Mr. Barnes – Suggested adding to the zoning chart and adding the previous resolution to the new resolution. As well as a deed restriction. He suggested making sure that any previously approved conditions are clear.

Mr. Halbruner agreed to this and will be going on site to measure the existing railing height and add to the zoning chart to be sure there is no ambiguity.

Mr. Casaccio agreed with updating the zoning chart to reflect the information. He recalls the application from 2016 and stated these items may not have been included in the resolution but were reflected in the submitted plans.

The meeting was opened to the public within 200’. Hearing no one and seeing no one that portion was closed.

The meeting was opened to the public outside of 200’.

Tom Rossi, 605 Commonwealth Avenue, was sworn. Mr. Rossi does not agree with the opinion of the engineer that the project does not impact on the neighborhood. It is very visible. He believes the increase in FAR is excessive. It is a small lot, but the owner was aware when they purchased it. They are self-created problems. The work they performed was not properly permitted. He doesn’t believe they should be allowed to have livable space on the third floor. He believes it is 4 floors. These regulations were developed to prevent excessive development. He does not support the application.

In response Mr. Halbruner testified that the applicant had gotten the proper zoning permit and was working in conjunction with obtaining the construction permits. Once it was realized they would need variance relief the work stopped. Once variances were approved, work resumed.

Mr. Rainear asked for further clarification of special reasons.

Mr. Halbruner explained that most importantly they need to prove that the site can accommodate the increased FAR. They demonstrated in exhibit 2 that the site can accommodate with no visual impact through the mass of the building. And by not increasing the number of bedrooms there is no increase in intensity. They can accommodate the increase in FAR without an adverse impact on the neighborhood. The negative criteria have been satisfied. There is no impairment to the public good and no substantial detriment to the intent and purpose of the zoning plan and zoning ordinance.

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

Mr. Shawl – The applicant, Judith Wolfe, has come before the board for the property located at 2712 Bayview Avenue in the Strathmere section of Upper Township known on the tax map as block 757 lot 3. The applicant seeks a use variance for floor area ratio along with bulk variance relief for a south side yard setback and maximum building coverage to construct an addition. Additional variances for the height of the rooftop deck railing and the maximum area permitted for a rooftop deck. While testimony was provided in the previous resolution it was not memorialized in a resolution that was approved by this board in 2016. The property is an unusually small lot roughly 2,088 square feet. It is an existing non-conforming use that was addressed in the 2016 application. The structure was previously flood damaged and fire damaged. It has a long history. There were some DEP/CAFRA issues which were unforeseen at the time that requires a portion of the first floor to be renovated and remove about 50 square feet. This removal makes the bedroom unusable. The existing is a two-bedroom, two bathroom and will remain a two-bedroom, two-bathroom single-family dwelling. There will be no increase in use.

The applicant is proposing to create a bedroom on the third floor within the existing footprint under an existing roof deck. The allowable FAR is 54%, approximately 1,100 square feet. The applicant is proposing a FAR of 72% or 1,498 square feet spaced over three stories. There is no increase in footprint, which becoming a little smaller from 34.29% to 32.13%. we heard testimony from the applicant engineer that the view would be enhanced on the bayside because of the removal of the 50 square feet. The lot size of 2,088 square feet is much smaller than the standard lot size of 4,000 square feet. The small lot size creates the high percentage of FAR. There is nothing that can be done to correct the size of the lot. There are existing dwellings on either side of the lot, one side is regulated by DEP and the other side has an existing road. We heard testimony and there was an exhibit provided that showing the reconfiguration of the deck area and bedroom area. The ceiling of the third floor has a roof deck on it and the height will not change. There was a railing that was previously approved as open space above the kitchen in 2016. There is a limit of how many stories of habitable space, and this will be three habitable floors where two floors are permitted. We heard testimony on the hardship for the CAFRA requirements and the undersized lot making this a difficult situation. We heard testimony about the benefits light, air and open space improving if the application is approved. The compliance of the DEP requirements and the bulkhead would be re-built. The floor elevation of the dwelling is above the elevation for that location. We heard testimony from the engineer that they are

improving the bay view and there is no increase in the intensity of the use because it is still a two-bedroom, two bath home. The applicant has agreed to a deed restriction that the maximum number of bedrooms is two. The third floor is required to keep the two-bedroom, two bath dwelling. The existing height will not change. We heard testimony from the engineer that the increase in mass is minimal. The building coverage is being reduced. We heard testimony from the public outside of 200' that the impact on the public is visible from a distance. And that they should not set aside rules that had been negotiated to address development in a sensitive coastal area. The FAR regulations were granted after the initial 2016 variance. The limit of two stories on a home has been in effect for a while.

Specific to the public comment Mr. Shawl stated it is a difficult task to efficiently design a building that complies with the limitations of this application. The use of the site was residential and will remain residential. He believes relief can be granted based on the testimony of the engineer the particulars of this property and location.

Ms. Petrozza – She concurs.

Mr. Burger – Concurs with Mr. Young that Mr. Halbruner's testimony is written into the resolution, and it is very clear. The applicant appeared to be accommodating in the previous application and later penalized because of the DEP. His opinion of the FAR is that it is almost a reduction of volume or at a minimum a consolidation of volume with no additional intensity. He is in favor of the application.

Mr. Jackson – He does not have a problem with the application.

Mr. Young – Not knowing who missed the DEP requirements, it wasn't intentional. It is being corrected now.

Mr. Mashura – We heard testimony that described the uniqueness of this lot being very undersized. The high-water line, hurricanes, fires. It would be difficult to find another application like this. There was testimony that, to no fault of the applicant, was issued a stop work order. The applicant followed through with obtaining board approval and proper permits.

Mr. Rainear – He has concerns about this application. The engineer stated the criteria for the FAR is that the site can accommodate the increase. He believes they squeezed the dwelling in. He is concerned about the addition of the third floor as that restriction is fundamental in Strathmere. He is aware that each application is viewed individually.

Ms. Galderisi – She believes the circumstances of this application have proven the need to grant the variances. She is in favor of the application.

Mr. Casaccio – Added that the proposed will conform to flood regulations which he finds more important than the number of floors. And the applicant has agreed to a deed restricting the number of bedrooms allowed.

A motion to approve the application with a revised zoning schedule to include the areas noted by the board engineer and a deed restriction was made by Ms. Petrozza, seconded by Mr. Shawl. In favor: Burger, Galderisi, Jackson, Mashura, Petrozza, Shawl, Casaccio

SCHAFFER, GARY and DEBBIE – Block 601 Lot 14.15 – BA 18-2023

Applicant is seeking variance relief for front yard setback of 32.5' where 50' is required to construct a covered front porch to an existing single-family dwelling at 29 Jill Avenue, Marmora, New Jersey

Dottie McCrosson, Attorney, McCrosson and Stanton, Ocean City. Ms. McCrosson representing Gary and Debbie Schaffer at 29 Jill Ave. The property is a single-family home in a fully developed neighborhood in Marmora located in the R (residential) Zone known as block 601 lot 14.15 The applicant proposes to put an 8' front porch across the front of the home.

Ms. McCrosson provided a copy of the tax map that had not been submitted with the packet. Listed as exhibit A-1. The lot is undersized, but the tax map shows that it is like other lots in the neighborhood. The proposed porch is 44' x 8' or 352 square feet. It would be roofed but not enclosed. They are asking for variances on existing non-conforming conditions. The required setback is 50', existing is 40.5', proposed is 32.5'. The other variance they would need is for building coverage. The residential zone permits 10%, existing is 10.3%, and proposed is 11.9%. Any other existing non-conforming conditions will not be affected. She believes the testimony will show the variances can be granted under the C2 criteria.

Gary Schaeffer, 29 Jill Avenue, was sworn. Mr. Schaeffer and his wife have lived at this property for 31 years. They raised their family there. It is a single-family home in a fully developed neighborhood. The proposed porch will span the width of the house at 44' and will be 8' deep. Their home is the only one without a porch. This will be an aesthetic improvement and is staying in character with the neighborhood. It will be roofed but not enclosed. They have 8 great grandchildren and want to create a shaded area to watch the kids. They will make use of a portable ramp for accessibility.

Mr. Young – He is familiar with the area. The home is immaculate. It is a great neighborhood.

Mr. Burger – Will you need more than 8' for the steps?

Mr. Casaccio – The steps won't be over 18" and won't be counted in the setback.

The meeting was open to the public.

John Burke, 30 Jill Avenue, was sworn. Mr. Burke is the neighbor and a licensed realtor. He has a background in real estate and believes the proposed work will be a benefit to the neighborhood and real estate value. He is in favor of the application.

William Harmon, 31 Jill Avenue, was sworn. Mr. Harmon thinks it will be a nice addition and will improve real estate value. He thinks it is a wonderful idea and supports the application.

Matt Vaughn, 26 Jill Avenue. Mr. Vaughn moved to the neighborhood in July. It is a great neighborhood and supports the application.

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

Mr. Shawl – The applicant, Gary and Debbie Schaffer, come before the board regarding their home at 29 Jill Avenue in Marmora also known as block 601 lot 14.15. The applicant is

proposing to add an open, covered porch along the front of their existing home. They seek variance relief for a front yard setback of 32.5' where 40.5' is existing and 50' is required and building coverage of 11.9% where 10.3% is existing and 10% is permitted. It will not be enclosed and there will be no HVAC. The lot is undersized for the residential zone. The applicant has been a resident of the township for 31 years. The property is the only one without a porch in the area. Adding it will be in character with the neighborhood. We heard from the public they were in support of the application, and this would allow the applicant to sit in the shade while watching their grandchildren. He supports the application.

Ms. Petrozza – Concurs with Mr. Shawl and is in favor of the application.

Mr. Burger – Is in favor of the application.

Mr. Jackson – Is in favor of the application.

Mr. Young – Is in favor of the application. He is a big advocate of porches within the neighborhood promoting public health and safety. It meets the light, air, and open space.

Mr. Mashura – In favor.

Mr. Rainear – It is a good project.

Ms. Galderisi – It is a great project and supports the application.

Mr. Casaccio – It promotes the proper population density, and he doesn't believe there is any substantial detriment to the intents and purpose of the zoning plan and zoning ordinance.

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

RESOLUTION

Hunter, W. Garry – Block 495 Lot 1.01 – BA 10-2023

A motion to approve the resolution was made by Mr. Shawl, seconded by Ms. Galderisi

In favor: Burger, Jackson, Mashura, Petrozza, Rainear, Shawl, Young, Casaccio

Abstain: Galderisi

BILLS

A motion to pay the bills as presented was made by: Mr. Mashura and seconded by Mr. Burger. All in attendance voted in favor.

Mr. Casaccio steps down for the rest of the meeting. Mr. Shawl will serve as chairperson for the remainder of the meeting.

DISCUSSION

Amendment of resolution BA 05-2023

Mr. Shawl – Ralph and Deanna Holt had previously come before the board to allow for an apartment above their existing business and there were certain statements made by the engineer and a member of the board that were not consistent with prior approvals.

Mr. Barnes explained the Jack family, that live adjacent to the Holt property, have said there are inconsistencies in the last resolution from what was previously approved. And it appears they are accurate. The biggest concern is the number of parking spaces. The correct way to remediate this issue is to notice everyone in the neighborhood that the board is going to modify the resolution to accurately reflect what exists on the property. This wasn't an error by Mr. Holt, it was an error by the municipality. There has been a history of litigation and he believes it best to notice the modification. Nothing is changing, it is merely memorializing what was already approved. The hours of operation is also something we will need to confirm. We will research what is accurate and prepare an amended resolution.

A motion to authorize the preparation of a resolution to address any anomalies that exist between the new resolution and what was previously approved was made by Ms. Petrozza seconded by Mr. Jackson.

All in favor.

ADJOURNMENT

A motion to adjourn the meeting was made by: Ms. Petrozza, seconded by Mr. Mashura.
All in favor. The meeting ended at 8:31 pm.

Submitted by,
Liz Oaks