

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
 REGULAR MEETING MINUTES
 JUNE 6, 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	Absent
Tom Jackson Alt #2	Present
Richard Mashura	Present
Lynn Petrozza	Present
Christopher Phifer	Present

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

Also, in attendance were Jeffrey Barnes, Board Solicitor (via Zoom) Greg Schneider, Board Engineer and Liz Oaks, Board Secretary and Zoning Officer.

APPROVAL OF THE MAY 2, 2024 MEETING MINUTES

A motion to approve the minutes was made by Mr. Unsworth and seconded by Mr. Jackson. In favor: Burger, Jackson, Mashura, Phifer, Shawl, Unsworth, Casaccio
 Abstain: Petrozza

Greg Schneider and Liz Oaks were sworn.

APPLICATIONS

Cedar Lane Development, LLC/Kruk Terrace – Block 561 Lot 21 – BA 02-2024

Applicant is seeking variance relief for minimum lot area, minimum lot width, minimum lot frontage and a use variance to construct a single-family dwelling in a commercial zone at 5 Kruk Terrace in Seaville, New Jersey.

Avery Teitler, attorney for the applicant, Kruk Terrace, LLC. for the property 5 Kruk Terrace also known on the tax map as block 561 lot 21. The property is an undersized lot with approximately 24,648 square feet of lot area. It is in the TCC Zone. The applicant is seeking a use variance to construct a single-family dwelling that would conform with all bulk standards of the zone. They request variance relief for minimum lot area, minimum lot width and lot frontage. The use variance is required because single-family dwellings are not permitted in the zone. The standard for determining whether a use variance is appropriate is showing the site is particularly suited for the proposed use, thus serving the general welfare of the municipality, this being the positive criteria. And whether the variance can be granted without substantial detriment to the public good without substantially impairing the intent and purpose of the zone plan and zoning ordinance, this being the negative criteria. The testimony and evidence will show the surrounding area is mostly comprised of residential dwellings which will make the proposed dwelling compatible with the

existing area. This will bring a level of conformity and harmony to the neighborhood. therefore, the property is particularly suited for the proposed development. Providing the negative criteria, the applicant presents no significant detriment and benefits the public good by maintaining the residential nature of the street. Granting the variance does not substantially impair the intent or purpose of the zone plan and zoning ordinance because of the size of the lot and the current uses surrounding the property.

Vincent Orlando, Engineer, 5 Cambridge Drive, Seaville, was sworn as an expert.

Paul Dietrich, 321 Central Avenue, Ocean City, was sworn as an expert.

Mr. Orlando – The applicant is seeking a D1 use variance to permit a single-family home in the TCC Zone. This town center zone is a mixed-use zone. Residential is permitted as part of a mixed use. This does not have a commercial component, thus requiring the D1 use variance. There are no real commercial uses in the area. To the northeast of this property is Osprey Cove which is a senior facility which contains 110 units. Across the street are single-family homes in the R Zone. To the southeast is a diner. We believe the application can be granted a D Variance under the following provisions. We believe there are 3 purposes under 40:55D-2:

(c) To provide adequate light, air, and open space.

When you look at the property and the requirements of the zone, the footprint of the zone, it is minimal. It preserves much of the open space. If you look at the zoning chart provided on the plans you will see, we meet each of the bulk requirements except for lot area. The front yard setback requirement is 50' where proposed is 103.69', the rear yard setback requirement is 50' where proposed is 103.69', each side yard setback requirement is 25' where 32' is proposed and the building height requirement is 35' where 24.5' is proposed. When you look at lot area, you must look at intensity of development. You will see that there is minimal use of this land.

(e) To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment.

He believes this application does this. It provides appropriate density and appropriate type of use on this particular property and does preserve the environment.

(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.

He believes this is the appropriate use for this development. He believes a mixed-use development on this property, given its size and location is not warranted. He thinks the residential use by itself is appropriate.

He believes there is no substantial detriment to the zone plan and zoning ordinance and no substantial detriment to the neighborhood. With respect to the neighborhood, there is no impact. Having this as residential development is an appropriate type of development, given the location. There is no impact on the existing uses. There is no detriment to the zone plan and zoning ordinance given the size of the property and location. If this is approved, he would encourage the board to recommend to the planning board to rezone this area in the future.

For these reasons, he believes the positive and negative criteria have been met.

Mr. Shawl – Would like to confirm that the bulk standards are the same as the R Zone. And requested testimony about the lot size to justify using it for a single-family dwelling. You must propose a location for the well and the septic.

Mr. Orlando confirmed the bulk standards are based on the R Zone. Any other residential property would use the same criteria.

Mr. Dietrich – There is a grandfather provision in the ordinance that covers undersized lots. If you have 30,000 square feet and 100' lot frontage or 20,000 square feet and 120' frontage you would be a compliant lot. This lot has the frontage of 30,000 square feet with 24,648 square feet and is kind of in between. It meets the lot size but not the frontage.

Mr. Orlando – If you get the use variance then you can look at the grandfather provision of the zone. These lots were subdivided many years ago and were conforming at that time. This property can meet the requirements of a septic system.

Mr. Shawl – There is a stone driveway on one corner of the driveway, is that the neighbors?

Mr. Orlando – Yes, it is the neighbors. They will discuss with the neighbor and either move it for them or create an easement. That will be determined after speaking with them. That property is an existing single-family dwelling. And vacant land on the other side of the lot.

Mr. Unsworth – You mention a vacant piece of property on the one side of the property. What is the reason we are not attempting to acquire that land to make the lot more conforming.

Mr. Orlando – We have not requested any buy-sells on this.

Mr. Unsworth - And make the argument that the lot is zoned TCC, and this application does not meet that intent. Elaborate on the reason it does not lend itself to the commercial aspect.

Mr. Orlando – When you look at the intent of the TCC Zone and the mixed-use type of development was to look at larger scale projects. He does not believe this zone is zoned properly.

Mr. Dietrich – When you look at homes that were constructed back in the 70's and 80's there are many streets that have these smaller lots such as in the MTCDD Zone. It is still supportive of the mixed-use zone where there is a mix of residential and commercial. He thinks this still meets the intent of the zone. Commercial would not be possible without sewer in the area. You could not put more density on this property, commercial or residential.

Mr. Schneider – There are a couple items on his review letter. Note what is being cleared on the plans. And the ordinance requires sidewalks under land use. Will you be seeking a variance.

Mr. Orlando – There are no sidewalks in the area, and they would request a variance.

Mr. Dietrich – Addressed how the application complies with the fair share housing. In section 20-4.7, the TC and TCC Zone contemplates affordable housing. Each applicant shall provide affordable housing units as required by the township housing plan and as determined by the New Jersey Council on Affordable Housing regulations. The 2018 Master Plan revision for the housing element and fair share plan, adopted August 8, 2018, reviewed that township housing requirements for affordable housing. It identified several projects that satisfied the township affordable housing obligation. It starts on page 32 of the plan. There are essentially four methods

to satisfy affordable housing. This was put in place at a time the township had no affordable housing plan to protect themselves. If something were adopted by COAH or affordable housing and the township did not have time to amend the ordinance, the township would automatically have to be in accordance with the fair share plan that was adopted by council on affordable housing by default. He explained some of the projects specific to affordable housing. The Marmora Town Center was an inclusionary zone. Any projects proposed in the MTCD Zone would have an affordable housing component. The TC and TCC Zone do not have an affordable housing obligation directly because it is not part of the fair share plan that was adopted. There would be an obligation to pay the development fee in accordance with the ordinance. Referencing a report provided by Tiffany CuvIELlo dated June 5, 2024. The report states, in paragraph 5, that a residential element in the TC/TCC zone requires a density transfer in accordance with paragraph j.1 20-6.8. He believes that is a little misleading. Residential development is permitted in the TC and TCC zones and in paragraph j says residential standards for townhouses and multi-family buildings. If they were building either of those, then they would have to comply with section j. Section j further references 20-6.8, the density transfer ordinance. That is the only provision that would require the density transfer. They could not build multi-family on a 26,000 square foot lot. In order to comply with affordable housing regulations in both the affordable housing plan and the ordinance that states, shall not exceed 16 units per acre for a townhouse or 12 units per acre for multi-family. There is no way they could build to that density on a 26,000 square foot lot. They are requesting a use variance for a single-family dwelling.

Mr. Burger asked for clarification on the calculation of development fees.

Mr. Dietrich – The township ordinance does provide for a project that gets a use variance; they would be subject to a 6% development fee. This is also in the state statute that enables the township to have a development fee ordinance. He added that the township has never imposed the 6% fee in the past while they have the ability per ordinance. If this were a commercial project, they would pay a 2.5% fee.

Mr. Unsworth – Are you asking for relief from the 6%?

Mr. Dietrich – It would be in kind with what the township has done since the bill was adopted in 2006. Imposing a 1.5% residential development fee for the project would be consistent what had been done in the past.

Mr. Casaccio – You will have to give us some reason to waive the 6% fee because it is in the ordinance.

Mr. Teitler – He understands if it is in the ordinance.

Mr. Unsworth – Requested a history of the properties.

Mr. Orlando – The properties were purchased under separate entities avoiding the merger argument. You send out a buy/sell letter and they are not interested. You cannot force an owner to buy or sell property.

Mr. Casaccio – The original subdivision was done in 1976. There are four existing residential dwellings on this street.

Mr. Shawl – You could build a multi-family unit.

Mr. Dietrich – You could in theory, however, the septic would not allow for that. The same with commercial, you could not get a septic, a stormwater basin and parking required for that lot size. There is potential for a smaller project, but it would not be practical. Providing reasonable housing is more practical.

Mr. Unsworth – If the end goal is to develop each of these lots on this street to residential, why not bring them all in at once.

Mr. Teitler – They did originally submit four applications and came to a workshop. There were issues brought up, one was about the affordable housing. Since then, one was sold.

Mr. Shawl – What would you state as special reasons?

Mr. Teitler – The lot is particularly suited for what they are proposing. The suitability comes from all the residential lots the same size. And you have single-family houses all along there.

Mr. Dietrich – We have developers reach out in the past. The MTC Zone has mixed-use buildings with commercial on the bottom and residential on the top. It is harder to get financing with mixed use buildings. A newer concept would be a mixed-use block, where you might have commercial along Route 9 and residential behind it. Kruk Terrace has commercial on one side and residential on the other. He thinks this does meet the purpose of zoning. We could do more density if there was sewer available or enough land for a sewage treatment facility, but land is not available. He believes this is the best fit for the zone and the property.

Mr. Barnes – When you go into you deliberation, you must look at zoning. It is not perfect. You must look at the intent of the zone plan and zoning ordinance. The applicant is seeking a use variance and you must look at the positive and negative criteria. There should be some give and take when dealing with a use variance. The applicant is willing to give the township the 6% development fee which helps offset the justification with doing away with the density transfer along with affordable housing set aside. Considering the dimensions of the lot and the location of the lot and the surrounding lots. Additionally, the fact that there is no sewer, the proposed use is pretty much all that can be done. You will need to decide whether you will impose the 6% affordable housing impact fee as opposed to the traditional 1.5% for residential and 2.5% for commercial.

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

Mr. Unsworth – The applicant, Cedar Lane Development, LLC come before the board regarding the property located at 5 Kruk Terrace, also known as block 561 lot 21 on the tax map. The applicant is seeking a use variance due to a single-family dwelling not being permitted in the TCC Zone. They have bulk variances requested in lot area and lot width. They have provided the history of the development, that they were conforming lots almost 50 years ago. We have heard what type of ownership is adjacent. There have been extensive discussions on the uniqueness of the existing lots. We have heard testimony from the professionals that the existing lots are not practical to develop and there is not enough surrounding area to meet the intent of the TCC Zone. They have made the argument that if this were a residential zone it would be considered in the “grandfathered” category, while not meeting all the requirements, it would be consistent with the provision in the ordinance. They have asked the board to waive the sidewalk and curb requirements. They have agreed to pay the 6% development fee for COAH per ordinance. There was no public comment. They testified there is sufficient space for well and septic on the site.

Because of the uniqueness of the zone being improperly or impractically zoned area where this lot cannot conform to the intent of the TCC Zone. He is in favor of this application as presented with the waiving of the sidewalks and curbs and the COAH fees as requirements.

Mr. Shawl – Concurs with Mr. Unsworth. He believes there will be substantial detriment to the zone plan or zoning ordinance and no substantial detriment to the public health. In this zone they are trying to create a walkable environment and a mix of residential and commercial. This development accomplishes this even without meeting the requirements. He thinks the lot area and frontage can be granted based on the historical information in the township. He agrees with the testimony they heard about the single-family home in this neighborhood would be consistent with many of the properties containing existing residential homes and is in character with the neighborhood. He believes there will be no public impact. And he agrees with the increased development impact fee.

Ms. Petrozza – Concurs with her colleagues.

Mr. Burger – After hearing the professionals talk about the history of the subdivision, he believes the planning board created some hardships and he thinks it is worth noting the applicant came into a workshop to explore other options. He thinks this was well thought out. The zone is not conducive to mixed use development. He is in favor of the application.

Mr. Jackson – After hearing the testimony of the professionals, he is in favor of the application.

Mr. Mashura – Residential development in the TCC zone requires a density transfer. However, for this use of single-family as described was not intended for this. He thinks it is a good fit and is in favor of the application.

Mr. Phifer – Nothing to add.

Mr. Casaccio – Zoning never keeps up with the modern times. He would like to add to the annual report to investigate this street for possible rezoning.

A motion to approve the application with the variances stated on the plan, the 6% COAH fee, comments from the board engineer that the clearing limits shall be added to the plan so that the site is not clear cut to preserve the tree preservation and landscape buffer requirements and the waiver of sidewalks was made by Ms. Petrozza, seconded by Ms. Shawl.
In favor: Burger, Mashura, Petrozza, Phifer, Shawl, Unsworth, Casaccio

RESOLUTIONS

D.V. Tower / Action Supply – Block 453 Lot 181 – BA 05-2024

A motion to approve the resolution was made by Mr. Unsworth, seconded by Ms. Petrozza.
In favor: Burger, Jackson, Mashura, Petrozza, Phifer, Shawl, Unsworth, Casaccio

Schroder, Schroder, and Delmonico – Block 453 Lots 249.05 & 255 – BA 01-2024

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

Ralph and Deanna Holt – Block 652.01 Lot 19 – BA 05-2023(A) Revised

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

In favor: Burger, Jackson, Mashura, Petrozza, Phifer, Shawl, Unsworth, Casaccio

PUBLIC PORTION

The meeting was open to the public. Hearing no one and seeing no one, the public portion was closed and returned to the board.

BILLS

A motion to pay the bills as presented was made by: Mr. Unsworth, seconded by Ms. Petrozza.

All in favor.

ADJOURNMENT

A motion to adjourn the meeting was made by: Mr. Unsworth, seconded by Mr. Phifer.

All in favor. The meeting ended at 7:30 pm.

Submitted by,
Liz Oaks