

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
JULY 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 6:31 p.m.

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

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

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

Also, in attendance were Richard King, Substitute Board Solicitor, Joseph Iudica, Substitute 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. Jackson and seconded by Mr. Unsworth.
In favor: Jackson, Mashura, Phifer, Shawl, Unsworth, Casaccio
Abstain: Galderisi, Rinear, Young

DISCUSSION

Resolution Dispute 01-2024

This discussion has been tabled until the August 1, 2024 meeting.

Joseph Iudica and Liz Oaks were sworn.

RESOLUTIONS

Cedar Lane Development, LLC/Kruk Terrace BA 02-2024

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

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

Abstain: Galderisi, Rinear, Young

BILLS

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

APPLICATIONS

MSGMB/Sea the Future – Block 587 Lot 16 - BA 07-2024

Applicant is seeking a site plan waiver under Resolution BA 19-2022 to modify the second floor from storage to a teacher's lounge, multipurpose rooms, and bathrooms with the addition of exterior stairs and landing at 901 South Shore Road, Palermo, New Jersey.

Cory Gilman, attorney for the applicant, MSGMB, LLC. with the principals being Stefan and Michelle Powell. The property is in the Residential or R Zone. Mr. Gilman explained the applicant had previously been granted approval by the Zoning Board on July 14, 2022. They were granted site plan approval with variances, including a use variance to expand and continue the school, Sea the Future Learning Center, on the site. The application submitted is very simple and is nothing more than a modification of the prior approval. They propose to add an outside set of stairs on the side yard for access to a modified second floor. The second floor was approved for storage, and they now want to use it for a teacher's lounge, student activity multi-purpose rooms and bathrooms with a few closets. The proposed modifications are di minimis in nature. They are requesting site plan waivers from all the technical requirements that are standard with a full site plan application simply due to the di minimis nature of the application.

Michelle Powell, 901 S Shore Road, was sworn.

Ms. Powell explained the plan to use the second floor for a teacher's lounge, a student activity room, closets and two bathrooms. The multi-purpose rooms will serve as activity rooms for the students when it is not weather permitting outside. There will be no increase in the number of students. The outside stairs are an additional means of access for fire safety. The location was chosen after consulting with a fire inspector. The location of the stairs along the side yard will not have a negative impact on the neighbors.

Mr. Young questioned if the change of use would impact the parking requirements.

Mr. Phifer added the change of storage to school did change the use.

Mr. Gilman stated there is no change in use.

Mr. Young stated that the storage is not considered habitable space. The parking is based on square footage not number of students.

Ms. Powell testified there would be no added students.

Mr. Casaccio agreed that he believed the parking calculation was based on square footage.

Mr. King the prior resolution stated that 49 parking spaces are required, and 34 parking spaces are provided. We don't know how the original calculation of 49 spaces was created. We don't know if they included the storage space if they were using space. We don't know if it was based on number of students. If we could hear some testimony on whether this use will likely impact the number of cars using the facility.

Ms. Powell testified they are only licensed for a certain number of students. The change does not allow to expand the number of students they are licensed for. The number of students they are licensed for is based on the number of classrooms. They have 89 students and 12 staff members. The flow of traffic includes pickup and drop off of students. There is no additional parking

needed for special events because they do them off-site. A standard day includes the teachers parking in the front lot closest to Route 9 and the back lot is for the pickup and drop off. There will be no weekend parties or any addition of busses.

Mr. Unsworth – Confirmed that the number of classrooms drives the number of students allowed by license.

Ms. Powell testified it is not the number of classrooms but the square footage of the classrooms they have downstairs.

Mr. Unsworth – The previous resolution stated maximum students approved is 155.

Ms. Powell testified that number is based on all three buildings. She is working on only the one building with the changes. She has six classrooms and that gives her the number of 89. The number of 89 can move amongst the three buildings.

Mr. Unsworth – If the number of students is based on number of classrooms, what does a classroom consist of?

Mr. Powell – A bathroom a sink and square footage based on the age of the student.

Mr. Unsworth suggested putting a max number of students in the resolution.

Mr. Gilman stated the fire approval was maximum of 189 with ten classrooms. Page 2, item q. states, “They expect ten classrooms with a maximum of 155 students, but they anticipate an average of 60-75 students.” He doesn’t believe that applicant would want to lower the number that was previously approved.

Mr. King – They were approved with 155 students and 34 parking spaces but are operating at a maximum of 89 due to state licensing.

Ms. Powell testified if they were to max out at 155 students the parking of 34 spaces would be sufficient. She does not believe the changes affect well and septic.

Mr. Iudica – The stairs encroach in the setback.

Mr. Gilman – We have the architect to testify to that.

Michael Vallese, Architect, 2123 Dune Drive, Avalon, was sworn as an expert.

Mr. Vallese explained the 2nd floor currently is storage only with one set of interior stairs that is closed off. They are proposing to use standard walls to create a teacher’s lounge, 2 multi-purpose rooms, 2 bathrooms and a hallway. They will open the interior stairs and add the exterior stairs. They propose a setback for the exterior stairs of 20.56’ where 25’ is required. Which requires a bulk variance. The construction will be per code. The stairs are the only physical change to the outside. He does not believe there is any substantial detriment to the public good. He does not believe there is any substantial impairment of the intent or purpose of the zone plan and zoning ordinance. He believes the proposed is di minimis. The stairs provide a 2nd egress for fire safety. It is a permitted prior use and there is a large buffer between the subject property and residential neighbors. The location of the stairs is not visible from the street or any neighbors. The school benefits the welfare of the public and is an inherently beneficial use. He believes the variances

can be granted because the benefits outweigh any detriments. In his professional opinion the variances can be granted under the C2 criteria.

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. Shawl – The applicant, MSGBM, LLC come before the Upper Township Zoning Board concerning their property at 901 South Shore Road in the Palermo section of Upper Township, also known as block 587 lot 16. The applicant is proposing to convert the second story into activity rooms, teacher’s lounge, and bathroom facilities. They propose an exterior set of stairs as a second means of egress for fire safety.

Mr. Unsworth continued the findings of fact. The stairs will meet the current building codes. The stairs will not be seen from the street. There is a tree buffer, so it is not visible to any neighbors. The school is an inherently beneficial use. The applicant keeps a beautiful property with improvements they have made. They were before the zoning board in 2022 and were granted approval for the site as it exists. They are finishing a second floor of an existing building. We have heard testimony to the use of that area. They propose a teacher’s lounge, activity rooms and restrooms. They have agreed to not use the new space as classrooms. The previous approval by the board was for 155 students. They are licensed for 89 students with the State. They have agreed to a maximum of 155 students. This is an expansion of a non-conforming use. The expansion is minimal for the steps. They are not expanding the intensity of use. The side yard setback is proposed at 20’ where 25’ is required. If approved, they have agreed to not use the additional space as classrooms. There was no public comment. The applicant testified that the addition of the steps would not affect the septic or well. He is in favor of this application as presented.

Mr. Jackson – He thinks it is a beautiful building and thinks it is important to have for young families in the township.

Mr. Phifer – Nothing to add. He is in favor of the application.

Mr. Young – The school is impeccable and a benefit to the township. He is in favor.

Mr. Shawl – He agrees with his colleagues. There was no public comment.

Mr. Rainear – Agrees with his colleagues.

Mr. Mashura – Agrees with his colleagues. He is in favor.

Ms. Galderisi – Agrees with her colleagues. The stairs are for safety as a means of egress. She is in favor of the application.

Mr. Casaccio – Concurs and adds that they will need to confirm with the county health department regarding the septic. He does not know what drives the septic, the square footage or student count. State licensing drives what number of students and staff are permitted.

Mr. King – The motion is to approve the converting of the second floor and add an exterior set of stairs. The second floor will not be used for classrooms. There will be no increase in the number of students. Waiver of a site plan. A bulk variance for side yard setback and a use variance for the expansion of a non-conforming use.

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

Paul Casaccio stepped down for the next application due to a conflict and left the meeting. Mr. Unsworth will chair the next application.

Dilks, Jeffrey and Kathleen – Block 561 Lot 24 - BA 08-2024

Applicant is seeking variance relief for lot depth of 115.7' where 200' is required, a driveway opening of 8.5' where 12' is required and a use variance to allow the construction of a single-family dwelling in the TCC Zone at 5 Kruk Terrace, Seaville, New Jersey.

Joe Maffei, Engineer, Engineer Design Associates, 5 Cambridge, was sworn as an expert.

Jeffrey Dilks, 37 Route 50, was sworn.

Mr. Maffei explained the property known as block 561 lot 4. The lot has about 37.68' of frontage on Kruk Terrace and 360' of frontage along Route 50. Based on the township ordinances it is not considered a corner lot because the angle is greater than 135 degrees creating a unique situation. The lot is 41,737 square feet and triangular. They propose to construct a single-family dwelling with an attached garage. They propose the driveway on Kruk Terrace. They propose new landscaping along Route 50 to serve as a shield. There is some existing vegetation. They will only clear what is required for the house. The property is in the TCC Zone which does not permit residential, thus requiring the D2 variance. They are also requesting some C variances. Lot depth of 115.7' where 200' is required, this is existing and non-conforming condition. In this case it is a hardship given the shape of the property and they can't do anything to increase the depth. The next C variance is also a hardship, for lot frontage. They have the driveway coming off Kruk Terrace. They only have about 37.86' of frontage on Kruk. The driveway is supposed to be 12' from the property line and they have 8.5' proposed. From a safety standpoint it is safer to have the driveway on Kruk rather than Route 50. The State also discourages a driveway along Route 50. This is why they consider it a hardship given the small amount of frontage on Kruk Terrace. The last C2 variance is for sidewalk. He does not believe there are any sidewalks along Route 50 or Kruk Terrace. Residential is not permitted in the TCC Zone creating a need for a use variance. This is an appropriate location based on Kruk Terrace having eight properties, four are existing single-family dwellings, one was recently approved for a single-family dwelling, two are vacant and one commercial. Behind the property is Osprey Cove, an age restricted community, which has 110 units. He does not believe it is a detriment to the public good nor the zone plan. There is an issue with affordable housing, he believes there was an application that was approved last month that agreed to a 6% Developmental Fee, which they agree to this.

Mr. Young – Thinks the keeping the driveway off Route 50 makes sense. He agrees with the location being next to Osprey Cove makes it an appropriate location. He doesn't think a commercial use would be appropriate.

Mr. Shawl – The garage looks a little different from that of a normal garage. Please provide some testimony about that.

Mr. Maffei – The applicant does have an off-site business of building docks. He does have equipment that he needs to store and maintain. They do not propose any work being conducted on site.

Mr. Mashura – The location is within a commercial zone that may come with standard business noise. Is applicant aware of this.

Mr. Dilks testified they are very familiar with the location and the commercial entities.

Mr. Maffei added that the location was particularly well suited for the proposed use.

Mr. Iudica – Added the affordable housing developmental fee of 6%.

Mr. Maffei – The applicant agrees to this fee.

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 applicants, Jeffrey and Kathleen Dilks, have come before the board concerning the property located at 37 Route 50 also known as block 561 lot 24. They propose to construct a single-family dwelling. The lot is a corner lot that fronts along Route 50 and a residential street Kruk Terrace. One side of the property is Dino's Diner, a commercial business and the other side is mostly single-family homes. The zoning is the TCC or Town Center Core which does not allow residential development. They are requesting a use variance to construct a home in this zone. They are asking to be relieved of the requirement to add sidewalk on the corner of their property. There are no other sidewalks on Route 50 or on Kruk Terrace. There are pre-existing non-conforming conditions for lot depth of 115.7 where 200' is required with no opportunity to buy land to increase the lot depth. Behind the property is Osprey Cove which is an over 55 community. The applicant is asking for a driveway opening on Kruk Terrace 8.5' from the property line where 12' is required. The lot is an irregularly shaped lot and there isn't sufficient frontage along Kruk Terrace to make the driveway work in any other location. Locating the driveway to use Kruk Terrace rather than Route 50 provides a safer environment for everybody. The applicant is proposing a single-family dwelling with an attached garage/shop associated driveway and stone area for outdoor storage. The applicant has an off-site business building docks and occasionally will have equipment in the garage/shop for storage and maintenance. On Kruk Terrace there are four existing single-family dwellings and one lot that was recently approved for a single-family dwelling. We heard testimony from the applicants' engineer that there would be no detriment to the public good or zone plan by granting this, given the location and unique shape of the lot. He concurs with the testimony that the design allows for light, air and open space with the irregular shaped lot and the size of the home being proposed and how the home is being situated on the lot. There was no public comment. He believes the variances can be granted without detriment to the public good and the applicant has agreed to a 6% development fee.

Mr. Young – Concur.

Mr. Phifer – Concur.

Mr. Jackson – Concur.

Mr. Rainear – Nothing to add.

Mr. Mashura – Nothing to add.

Mr. Unsworth – Concur. There was no public comment.

A motion to approve the application was made by Ms. Galderisi, seconded by Mr. Mashura.
In favor: Galderisi, Jackson, Mashura, Phifer, Rinear, Shawl, Unsworth

ADJOURNMENT

A motion to adjourn the meeting was made by: Ms. Galderisi, seconded by Mr. Mashura.
All in favor. The meeting ended at 7:38 pm.

Submitted by,
Liz Oaks