

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING MINUTES  
SEPTEMBER 5, 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	Absent
Sherrie Galderisi	Absent
Tom Jackson Alt #2	Present
Richard Mashura	Present
Lynn Petrozza	Present
Christopher Phifer	Present

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

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

Greg Schneider and Liz Oaks were sworn.

**APPROVAL OF THE AUGUST 1, 2024 MEETING MINUTES**

A motion to approve the minutes was made by Mr. Shawl and seconded by Mr. Mashura.

In favor: Burger, Mashura, Shawl, Unsworth, Young

Abstain: Jackson, Petrozza, Phifer

**APPLICATIONS**

**Cedar Lane Development, LLC – Block 561 Lot 23 – BA 09-2024**

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 the TCC Zone at 1 Kruk Terrace in Seaville, New Jersey.

Avery Teitler, Attorney, Teitler and Teitler, LLC.

Robert Bachich, 3323 Simpson Avenue, Ocean City was sworn.

Plot plan and elevations – Bachich Associates dated 6/23/23, revised 7/5/23.

Variances – Minimum lot area, use variance and sidewalk

In the effort to save time the two applications will be presented at the same time due to their similarities. Both lots seek variances for minimum lot area of 24,638 where 40,000 is required. A use variance to allow a single-family dwelling in the TCC zone. And relief from the sidewalk. Mr. Teitler explained the applications were part of a four-tract parcel with one on the corner. Two previous applications have already been approved and they agree to the same conditions. These two applications, 1 Kruk Terrace and 3 Kruk Terrace, are similar. They are seeking a use variance to build single-family dwellings in the TCC zone where it is prohibited. The engineer report

reflects the need for a use variance where single-family dwellings are prohibited. The lot area is 24,638 square feet where 40,000 square feet is required. It was originally part of a subdivision from 1976.

These sites are particularly suited for this development. It would be inappropriate for commercial use or mixed use. The septic could not handle a project on lots this size. It would cut into the light, air, and open space. They had spoken with Mr. Dietrich, the previous township engineer, and had been told single-family dwellings would be a more sensible option in this location. They are proposing modest dwellings that are appropriate to the lot size. This is a better alternative to other options mostly due to the lot size.

The positive criteria have been met; the lots are particularly suited for this development. The proposed bulk requirements are below the standards. There is no detriment to the neighborhood, zone plan or zoning ordinance.

Mr. Young – The proposed development is consistent with what is existing.

Mr. Phifer – He believes it has been mentioned in other meetings that this area may be zoned improperly.

Mr. Burger – The applicant agrees to the conditions imposed on the previous two approved applications.

Mr. Schneider – Will the applicant be adding curb and sidewalk to the plan or are you requesting variances for this.

Mr. Teitler – They would be asking for variance relief for curb and sidewalk.

Mr. Bachich – The lots will only be cleared to accommodate the house and septic.

Mr. Barnes – The previous applications agreed to a 6% development fee.

Mr. Teitler – Confirmed the applicant agrees to the 6% development fee.

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

Mr. Shawl – The applicant, Cedar Lane Development, LLC, has come before the board regarding two properties, 1 Kruk Terrace also known as block 561 lot 22 and 3 Kruk Terrace also known as block 561 lot 23. The applicant is seeking a use variance to allow single-family dwellings on two separate lots in the TCC Town Center zone where they are prohibited. They also seek a variance for lot size of 24,638 square feet where 40,000 square feet is required. There have been two previous applications of the original 4 tract subdivision that have recently received approval from this board. They propose to construct a single-family dwelling on each lot that will be similar in character with the neighborhood. We heard testimony from Mr. Bachich that the lot sizes are like those in the neighborhood. We heard testimony that the intended use for that zone is not an option due to the sizes of the lots. The septic would not be able to support such use. The proposed will provide light, air, and open space which is one of the special reasons. There is a diner across the street. We heard testimony from the applicant that there is no detriment to the public good because they are proposing residential on a street that already has residential. There is no detriment to the zone plan because they are developing the land in a way that is consistent with

the existing. There is no doctrine of merger issue due to the properties being owned by different people. The applicant has agreed to the same conditions as imposed on the previous applications which includes a 6% development fee. They agreed to not clear cut the lot and they will maintain the landscape buffer. They are asking for a variance for sidewalk because none of the existing homes along that street have any sidewalks. There was no public comment, and he is in favor of the application.

There were no other comments from the board.

Mr. Barnes – These applications agree to the conditions imposed on the previous applications.

A motion to approve the application BA 09-2024 was made by Ms. Petrozza  
The motion was seconded by Mr. Shawl  
In favor: Burger, Jackson, Mashura, Petrozza, Phifer, Shawl, Unsworth

Cedar Lane Development, LLC – Block 561 Lot 22 – BA 10-2024

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 the TCC Zone at 3 Kruk Terrace in Seville, New Jersey.

Mr. Teitler – All of the previous stated is the same for this application.

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

Mr. Shawl – The previous findings of fact apply to this application with the only difference of the address and owner.

There were no additional comments from the board.

A motion to approve application BA 10-2024 was made by Mr. Jackson  
The motion was seconded by Mr. Mashura  
In favor: Burger, Jackson, Mashura, Petrozza, Phifer, Shawl, Unsworth

Lewis, Andrew – Block 730 Lot 10 – BA 11-2024

Applicant is seeking a use variance for the expansion of a non-conforming use with variance relief for rear yard setback to expand an existing porch and relief for a side yard setback and accessory building coverage to construct a detached garage at 7 N. Shore Road in Marmora, New Jersey.

Survey – Fralinger Engineering, dated 11/17/21.

Architectural Plans – Thomas/Bechtold – 2/28/24, revised 6/16/24.

Variations – Principal/rear yard setback, Accessory/side yard setback, building coverage, sidewalks, and parking in the front yard.

Andrew Lewis, 7 N. Shore Road, was sworn.

Mr. Lewis – His application is for the expansion of a non-conforming use. The property is located north of Roosevelt Boulevard. He would like to expand the existing porch in the rear which requires a rear yard setback variance. He is doing interior renovations and will be changing the front door which affects the steps and landing. He is proposing a detached garage that is 484

square feet for non-habitable storage. The location is determined due to the septic. Many other homes in the area have similar garages. He will be removing existing accessory structures. The neighbors within 200' have shown support. There is no detriment to the neighbors. The south side neighbor is the old Grace Oil lot and there are no proposed changes on the north side that abuts a neighbor. He believes the proposed changes will benefit the community.

Mr. Young – The distance of 7' off the street may be a concern with the site triangle.

Mr. Schneider – The visibility is fine.

Mr. Burger – Are the steps in the rear what are causing a need for a variance? If they are under 18" they would not be a factor.

Mr. Schneider – He may as well go with the variance request.

Mr. Shawl – Asked about the setbacks and the driveway.

Mr. Schneider – The front yard setback is 0' and the rear yard setback is 50'. The driveway at 8' is not a concern.

Mr. Shawl – The garage is too close. Could it be moved?

Mr. Lewis – The most he could move it back is 1'. The location is for access.

Mr. Mashura – Does he need a variance for a structure in the front yard.

Mr. Schneider – Parking is not permitted in the front yard. Variances are needed for both.

Mr. Lewis – He doesn't believe there is any detriment to the public good. It compliments the area. It is a needed improvement. He will now match the area. There is no impact on the zone plan or zoning ordinance. He cites the following special reason from the purposes of zoning 40:55D-2:

- (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..
- (b.) To secure safety from fire, flood, panic and other natural and man-made disasters.
- (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 does not believe there is any detriment to the zone plan or zoning ordinance. He does not believe there will be any negative impact in the neighborhood. The property needed improvement.

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, Andrew Lewis, is before the board requesting variance relief for his property at 7 N. Shore Road in Marmora also known as block 730 lot 10. He is seeking a use variance along with bulk variances to remodel and construct a 1-car detached garage. The garage will be 7.5 feet from the property line. The proposed rear yard setback is 29' where 50' is required for the principal structure. The accessory structure has a proposed setback of 6' where 10' is required and maximum building coverage of 8.30% where 5% is allowed. The lot is undersized. The applicant has already received septic approval for drain field repair. The septic

dictates the location of the detached garage. We heard testimony that the applicant will be removing the existing accessory structures. There will be no detriment to the neighborhood. The proposed will be similar to others in the neighborhood. There is no detriment to the zone plan or zoning ordinance because it is an existing residential development that will be enhanced by his improvements. No detriment to the public good because it has been a residence for quite some time. The property fronts North Shore Road. The proposed is similar to the neighborhood. The property is in the MTCD zone requiring a use variance to allow for the expansion of a non-conforming use. There was no public comment.

Mr. Young – It is an undersized lot that is not conducive to the area.

Mr. Burger – It is difficult to find smaller homes in the township.

Ms. Petrozza – Concur with her colleagues.

Mr. Jackson – Concur, in favor of the application.

Mr. Mashura – Concur, in favor of the application.

Mr. Phifer – The applicant has septic approval.

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

Union Chapel by the Sea – Block 600 Lots 14.01, 14.02, 15 and 39.01 – BA 12-2024

Applicant is seeking amended site plan approval with variance relief for front yard setback of 149.5' where maximum is 0' and to permit 49 parking spaces where 50 is required and to demolish all existing structures on the property to continue with the prior approval to construct a sanctuary building with supporting infrastructure at 300/306 Route 9 South in Marmora, New Jersey.

Site Plan – EDA, 3/1/23, revised 6/20/24  
Variances – Use, front yard setback, parking  
Waivers – Curbing, stone driveway, vinyl trash enclosure

Richard Hoff, Bisgaier Hoff, attorney for the applicant.

Mr. Hoff – This application is a revision to the previously approved in May 2024. The approval included a D1 variance and bulk variances to construct a church in the MTCD zone. The property is located at 300 Route 9, block 600 lots 14.01, 14.02, 15 and 39.01. They are back with revisions due to financial constraints. The church is smaller. They propose to remove the three residential units previously agreed to satisfy affordable housing requirements. There have been discussions with both the township housing liaison and Mr. Barnes. They have not come to a final agreement but are asking that the application be granted with the condition of the future agreement. The applicant cannot keep or run affordable housing units. They will come back to the board if they can not come to an agreement with the governing body.

Mr. Barnes – Suggested the board focus on the site and allow the governing body to come to an agreement regarding the affordable housing.

Joseph Maffei, Engineer with EDA, 5 Cambridge Drive, was sworn as an expert.

Mr. Maffei – He refers to the overall site plan and describes the site. There are two large trees that will remain. They have their DOT in place, there are no changes. The original parking variance was for 54 spaces where 49 was required. They now only need 50 spaces where 49 are required. The classes are the same. He shows the removal of the houses. The structure will be 2,000 square feet.

They propose to do the project in phases. Phase 1 will be able to stand on its own with stormwater and septic. The phasing is due to financial constraints. They still need a variance for the front yard setback of zero. He believes it is a matter of safety with the traffic. They only need a parking variance for one spot. They are requesting a waiver for curbing and a vinyl fence enclosure for the trash. The existing houses are in very bad shape and adds to the reason to remove them. There is a slight change to the footprint.

Mr. Unsworth – Asked Mr. Barnes if the affordable housing aspect would be a condition.

Mr. Barnes – The committee will manage the agreement. They will establish how payment will be made and bonds.

Mr. Hoff – They are uncertain of a start date. The applicant still plans on the driveway leading to Stagecoach, but this is dictated by finances.

Mr. Shawl – The original use variance was granted with the understanding they would be providing the affordable housing.

Mr. Maffei – They will still comply, in a different way.

Mr. Hoff – The affordable housing is a derivative of residential. With new residential housing the affordable requirements kick in. In his opinion the affordable housing shouldn't even be an issue. They can't do the original but are coming up with something else.

Mr. Barnes – The use variance was for the church, not the affordable housing.

Ms. Petrozza – The housing can be either built or pay. They are suggesting a monetary solution.

Mr. Barnes – There is a gray area about the obligation. They are working on coming up with a compromise. They gained the approvals and then realized the housing wasn't practical. Rather than not do anything they have offered a compromise.

Mr. Unsworth – Asked Mr. Barnes if he thought they would come to an agreement.

Mr. Barnes – He is confident they are working toward something that would benefit the Township.

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. Barnes – The applicant agrees to prepare a deed of consolidation, to install a fence around the pecan tree during construction to prevent any harm to the tree, provide a sidewalk on Rt 9, they

agree to provide a gate on Stagecoach Road that shall be monitored and only open for ingress and egress during hours of operation only, provided they have the driveway. There does not need to be a fair share housing deed because they are not going to do that. They agree to a condition of approval upon township committee agreeing to payment in lieu of providing units as well as secure payment which will be tied directly into the certificate of occupancy being issued. The agreement would then be attached to the resolution.

Mr. Shawl – The applicant, Union Chapel by the Sea, has come regarding the property located at 300/306 Route 9, also known as block 600 lots 14.01, 14.02, 15 and 39.01. The applicant is returning to the board after receiving approval in May 2024 to construct a church in the MTCDD zone requiring a use variance and various bulk variances. The applicant has submitted revised plans. They are seeking preliminary and final site plan approval. The site plan shows the removal of the dwellings on site that were set aside for affordable housing. They seek a variance for the front yard setback 149.5' where 0' is required. They will still need a parking variance but what was originally 49 spaces for a required 54, the changes only require 50 spaces. They will be short only one space. Route 9 will have the same parking access with a stone parking lot. They have proposed phasing, but they are not sure of the timeline. They are working towards an agreement with council regarding the fair share housing contribution. Conditions of resolution BA 07-2023 is still applicable other than the fair share housing. There was no public comment.

Mr. Young – The changes will not impact the application. He never saw the need for affordable housing because it is commercial. The phasing will create standalone in the first phase. The road is not necessary. It benefits the community.

Mr. Burger – This is a reduction. Is there affect on the stormwater calculations?

Mr. Maffei – There is no affect on the stormwater.

Ms. Petrozza - Concurs with her colleagues.

Mr. Jackson – Nothing to add.

Mr. Mashura – Their willingness to compromise is commendable.

Mr. Phifer – Nothing to add.

Mr. Unsworth – He is satisfied with the affordable housing contribution being approved by the governing body. He does not believe it is a detriment to the appearance or the neighborhood to not have the older structures. He is in favor of the application.

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

## **DISCUSSION**

Resolution Dispute 01-2024

Mr. Unsworth and Mr. Phifer step down for this discussion.

The applicant's attorney, John Amenhauser was not available and Mr. Schroeder and his son-in-law, Robert Delmonico were present and explained they did not believe a deed restriction was agreed upon regarding the use of pond area. They do not intend to have campers use it. However, on occasion they feel they should be able to.

There was discussion with the board members that were involved in the application. They did not want to make any decisions without listening to the recording.

This discussion will be carried to the October meeting.

### **RESOLUTIONS**

John Federico – Block 560 Lot 2 & 3 – BA 25-2023

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

### **BILLS**

A motion to pay the bills as presented was made by:	Mr. Phifer
The motion was seconded by:	Ms. Petrozza
All in favor.	

### **ADJOURNMENT**

A motion to adjourn the meeting was made by:	Ms. Petrozza
The motion was seconded by:	Mr. Jackson
All in favor. The meeting ended at 9:50 pm.	

Submitted by,  
Liz Oaks