

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT  
 REGULAR MEETING MINUTES  
 OCTOBER 3, 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	Absent
Richard Mashura	Present
Lynn Petrozza	Present
Christopher Phifer	Present

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

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

**APPROVAL OF THE SEPTEMBER 5, 2024 MEETING MINUTES**

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

Greg Schneider and Liz Oaks were sworn.

**APPLICATIONS**

**Fitzpatrick, Steven – Block 666 Lots 10.02 & 11 – BA 13-2024**

Applicant is seeking bulk variance relief for front yard setback and building coverage to construct a 2nd floor addition to an existing residential dwelling at 24 Ventnor Avenue in Marmora, New Jersey.

Avery Teitler, Attorney, Teitler and Teitler, LLC.

Plan of Survey, Koelling & Associates

Variance Plan, McAfee Architects

Variations

- Minimum front yard setback of 32.3’ where 50’ is required.
- Maximum building coverage of 26.8% where 22% is permitted.

Exhibits

- A-1, Cape May County Department of Health, July 12, 2024

Mr. Teitler, on behalf of the applicant, explained the property is an undersized lot in the center residential zone and contains an existing single-family dwelling. The applicant would like to renovate the existing dwelling, adding a second floor that will contain two bedrooms and two

bathrooms. The existing dwelling contains two bedrooms and one bathroom. To accomplish the renovations, they require two variances: one for front yard setback and one for building coverage. The variance request stems partly from the fact that the lot is undersized. As a result, the variances can be granted under the C1 criteria under hardship. All the surrounding properties are fully developed therefore the applicant is unable to acquire additional land to become conforming. This also falls under the C2 criteria, citing the following special reasons 40:55D-2:

- 1- (c) To provide adequate light, air, and open space.
- 2- (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.

The evidence and testimony will show there will be no substantial detriment to the public good. Granting the variances will not substantially impair the intent or the purpose of the zone plan or zoning ordinance.

Arthur John Chew III, Architect, 130 W. Seaview Avenue, Linwood, was sworn.

Mr. Chew – The applicant has a small 2 bedroom, 1 story dwelling on an undersized lot. Most of the homes in the neighborhood are similar and are sitting approximately 30’ from the front yard. All the lots are undersized in the neighborhood. the applicant proposed to turn the two-bedroom into a three-bedroom, thus supporting his growing family. Lot area, lot width and lot depth are all existing non-conforming conditions with all surrounding lots developed. The request for a variance for the front yard setback is a result of adding a 6’ open-air covered porch to the front of the dwelling. It is a modest sized porch where existing is a stoop. It will add to the architectural elements of the neighborhood. The request for a building coverage is di minimis. The side yard setbacks are not changing. The proposed height is well under the allowed maximum. The goal is to create a more functional dwelling going from a two-bedroom to a three-bedroom and a one bath to a three-bath home. The septic has been reviewed by the health department and provided a letter, exhibit A-1, stating the septic is in compliance. The plans show they will be removing a ramp in the rear and one shed on the southeast corner of the property. There is a garage that will be kept. He believes the variances can be granted under the C1/hardship criteria due to the undersized lot and the C2/flexible criteria. The porch allows for light, air, and open space. The proposed will improve the aesthetics and stay in character with the neighborhood and improving the housing stock. There is no detriment to the public good. By granting these variances there would be no substantial impairment to the intent and purpose to the zone plan or zoning ordinance.

There were no questions from the board and no comments from the board engineer.

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, Steven Fitzpatrick, comes before the board regarding his property at 24 Ventnor Avenue in Marmora known on the tax map as block 666 lots 10.02 and 11. The property is an undersized lot with a single-story, single-family dwelling. He proposes to add a second-floor addition and add a modest front porch. He proposes to remove an existing shed and ramp. We heard testimony from their professional that the proposed will be accomplished while maintaining the light, air, and open space. The setback and the lot coverage will only slightly exacerbate the front yard area and not the side yard. The building coverage is proposed to be 26.8% where 22% is allowed. There are many undersized lots in the neighborhood. The engineer

testified there would be no detriment to the public good. There will be no detriment to the intent of purpose of the zone plan or zoning ordinance. The proposed changes are designed to be in character with the neighborhood and will improve the housing stock.

Ms. Petrozza – Concurs and adds there was no public comment. She is in favor of the application.

Mr. Burger – They are adding a second floor and remaining 11’ under the maximum height. There will be an additional 17’ of aggregate side yard setback. He is in favor of the application.

Mr. Mashura – Nothing to add.

Mr. Rainear – Nothing to add.

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

Mr. Casaccio – No additional space was available to be acquired to relieve any of the variances. There was a letter, exhibit A-1, provided by the Department of Health that the addition can be supported by the existing septic.

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

### **DISCUSSION part 1**

#### Meeting Dates 2025

Mr. Casaccio explained each of the meetings will be the first Thursday of the month except for January and November, which will be the second Thursday. The January meeting must be after the committee meeting and the November date is moved due to holiday schedules. He asked if anyone had any concerns about the dates. There were no comments from the board members, board engineer or the board attorney. The meeting dates will be adopted at next months meeting.

### **RESOLUTIONS**

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

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

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

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

Lewis, Andrew – Block 730 Lot 10 – BA 11-2024  
A motion to approve the resolution was made by  
The motion was seconded by  
In favor: Burger, Mashura, Petrozza, Phifer, Shawl  
Abstain: Rinear, Casaccio

Mr. Shawl  
Ms. Petrozza

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

A motion to approve the resolution was made by  
The motion was seconded by  
In favor: Burger, Mashura, Petrozza, Phifer, Shawl  
Abstain: Rinear, Casaccio

Mr. Shawl  
Mr. Phifer

### **BILLS**

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

Mr. Phifer  
Ms. Petrozza

Mr. Casaccio and Mr. Phifer have stepped down at this time with Mr. Shawl now serving as chair.

### **DISCUSSION part 2**

Resolution Dispute 01-2024 Schroder, Schroder, and Delmonico

John Amenhauser, Attorney for the applicant and Robert Delmonico were present.

Mr. Amenhauser – It is his understanding that there had been a discussion last month regarding the Schroder, Schroder and Delmonico application and the board members wanted to listen to the audio recording of the original meeting. He has nothing to add; he can answer any questions the board has. He is looking for the board’s interpretation as to whether the additional language included in the resolution on page 14 paragraph 4 related to the deed restriction is necessary. Their position is, as stated in his letter to the board dated July 2, 2024, that while they agreed to a deed restriction contained in the actual deed regarding stormwater management, they did not agree to any further restriction to keeping anyone out and preventing the use of recreational activities. The resolution contains that they agreed to advise occupants and guests of the restriction of using the area for recreation, swimming, fishing, etc. What they did not agree to was to add to the existing deed restriction. One reason they did not agree to this would be financial obligation. They would need to monitor the area. The cost to pay someone 24/7 would be cost prohibitive. Mr. Delmonico has stated that there are times people from the neighborhood will go in the area without his permission. They do have no trespassing signs up.

Mr. Shawl – Doesn’t know how you could keep people out 100% of the time. You’d have to put up a “forcefield”.

Mr. Amenhauser – Who enforces the deed restriction? What if the neighbors trespass only to report them for not complying with the deed restriction and take them to court?

Mr. Shawl – After listening to the meeting he had noted a few key times and points. At 3:40 Mr. Delmonico is stating his case and states the problems he is having includes the insurance liability.

He also talks about people coming on his property without permission to use the lake. At 11:20 the engineer provides testimony that there won't be any use of the lake. At 24 minutes there is testimony about signage. At 1:42 there are comments about a deed restriction involving the stormwater. At minute 47 there is comment in response to public comment that the zoning officer would enforce the resolution. He believes that having a deed restriction does not mean you have to hire someone. You are concerned due to insurance liability. That has nothing to do with the township. The insurance risk is a concern whether they are invited or not. If the signage says no fishing, no swimming, no trespassing, and someone is there somebody trespassed because it doesn't say no trespassing unless invited.

Mr. Amenhauser – They agree to the conditions, they don't think it should be deed restricted that would carry on through future sales. He doesn't think it is necessary nor ever required.

Mr. Shawl – They have requested the resolutions are filed with the deed. He doesn't know the legal differences between having the resolution attached and a deed restriction.

Mr. Rainear – After listening to the meeting he believes it is crystal clear. He doesn't see how they could reverse that. He voted based on the agreed deed restriction.

Mr. Mashura – Agreed with Mr. Rainear and added that the findings of fact and the conditions as read by Mr. Barnes reflect this. He voted based on this information. Mr. Amenhauser did not comment when Mr. Barnes listed it in his conditions.

Mr. Amenhauser – It was his understanding that was the agreed upon existing deed restriction. There had been no testimony to a deed restriction.

Mr. Rainear – Once it was listed as a condition, it became a condition of approval.

Mr. Mashura – He believes it would be reckless for the board to remove this and would expect they would be sued.

Mr. Amenhauser – They have no intention of filing a new application. The decision of the board will stand.

Mr. Burger – He believes the board understood it the way Mr. Barnes read it. He believes the public understood it the way Mr. Barnes read it. He believes any change would require public notice.

Mr. Barnes – It was agreed that the applicant would do everything in their power to restrict recreation and it was a selling point to the public.

### **ADJOURNMENT**

A motion to adjourn the meeting was made by:  
The motion was seconded by:  
All in favor. The meeting ended at 7:17 pm.

Ms. Petrozza  
Mr. Mashura

Submitted by,  
Liz Oaks