

# **BOROUGH OF CAPE MAY POINT**

## **Planning Board**

### **Meeting Minutes**

**Wednesday, April 15, 2020 at 7:00 pm**

**Cape May Point Municipal Offices - ZOOM**

#### **Pledge of Allegiance**

#### **Opening**

In compliance with the Open Public Meetings Act, adequate notice of this session has been provided by official announcement in the Star and Wave Newspaper and posting of the scheduled meeting dates on the official Municipal Bulletin Board, 215 Lighthouse Avenue, Borough of Cape May Point, New Jersey.

#### **Roll Call**

Present: Mr. Greenberg, Mr. Keosky, Comm. vanHeeswyk, Mayor Moffatt, Mr. Casey, Mr. Hood, Mrs. Busch, Mr. Yunghans, Mr. Murphy, Mrs. Leming, Ms. Kelly, Mr. Sowers

Absent: None

Also Present: Rhiannon Worthington, Secretary; Mr. Nathan Van Embden, Esq., Attorney

#### **Minutes**

The minutes from the January 15, 2020 meeting were approved with correction on a motion by Comm. vanHeeswyk and second by Mr. Greenberg. All present voted aye except for Mrs. Busch and Mr. Murphy who abstained.

#### **Business**

1. Oath of Office
  - a. No new members have been appointed to the Board, so the Oath of Office is not required to be completed at this time.
  - b. Mr. Fraatz resigned. At the April 9 2020 Council meeting, Mr. Murphy was appointed to fill the vacant full member position; Mrs. Leming, Ms. Kelly and Mr. Sowers were all moved up an Alternate position, leaving Alternate 4 position vacant.
2. Special Resolution SR PB2020-01: Appointment of Chairperson and Vice Chairperson
  - a. Chairperson
    - i. Mayor Moffatt nominated Mr. Greenberg for Chairperson; Ms. Kelly second. Nominations were closed on a motion by Mayor Moffatt and second by Comm. vanHeeswyk; all present voted aye.
    - ii. All present voted aye; Mr. Keosky was not present.
  - b. Vice Chairperson
    - i. Mayor Moffatt nominated Mr. Keosky for Vice Chairperson; Ms. Kelly second. Nominations were closed on a motion by Mr. Murphy and second by Mayor Moffatt; all present voted aye.
    - ii. All present voted aye; Mr. Keosky was not present.
3. Special Resolution SR PB2020-02: Schedule of Planning Board Meetings 2020-2021 and Designation of Official Newspaper
  - a. Motion made by Comm. vanHeeswyk and second by Mayor Moffatt. All present voted aye; Mr. Keosky was not present.
4. Special Resolution SR PB2020-03: Appointment of Board Professionals
  - a. Motion made to nominate as written by Comm. vanHeeswyk and second by Mr. Keosky. All present voted aye.
5. Hearing for Application PB2020-03: 209 Ocean Avenue, Block 28, Lots 1 & 10
  - a. Applicant: Mr. William Klimashousky and Ms. Patricia Gerue (not present)

- b. Applicant's Representative: Ms. Lyndsy Newcomb, Esq. of Monzo Catanese Hilleglass PC of Cape May Court House NJ.
- c. Applicant's Professional: Mr. George Swenson of Martinelli Survey Group of Wildwood NJ.
- d. Ms. Newcomb testified the following:
  - i. Application seeks a minor subdivision, creating two conforming lots including one oversized lot. No development is proposed at this time. The applicant intends to bond for demolition of the structures when the plat is filed.
  - ii. Addressed comment from Mr. Graham recommending water and sewer laterals for proposed property 1.02 come from Ocean Avenue as opposed to Yale. Mr. Graham suggested due to extensive cost due to depth of Yale and also that due to upcoming road work, there would likely be a road opening moratorium on Yale for a period of time.
  - iii. Ms. Newcomb asked the applicant to confirm that he intends to connect the water and sewer laterals for both lots from Ocean Avenue with a utility easement on proposed lot 1.01 for the laterals for proposed lot 1.02. Mr. Klimshousky confirmed.
- e. Mr. Swenson testified the following:
  - i. Total existing lot size is 10,168 square feet. Proposed lot 1.01 would be on the corner of Yale and Ocean Avenues and total 5,082 square feet. Proposed lot 1.02 would be facing Yale Avenue and total 5,086 square feet.
  - ii. Both proposed lots are fully conforming and no variances are required.
- f. Mr. Klimashousky was sworn and testified the following:
  - i. He asked about the possibility of keeping the shed structure, as it will be on one of the new lots, not on both like the existing house, should he or the new property owner desire to retain it.
    - i. There was discussion among Ms. Newcomb, Mr. VanEmbden and Comm. vanHeeswyk and it was determined that, the relief to request to keep the structure at the time of demolition could be sought with this application. Either way, whether the relief was granted or not at that time, the bond would be available to cover the demolition.
    - ii. Several board members expressed varying views regarding this "condition".
    - iii. Ms. Newcomb stated that the application would proceed as presented with no conditions or modifications in regards to potential retention of the existing accessory structure.
  - ii. He understands this process (subdivision) can take some time and wanted to complete this task and be ready for the next step when he felt it appropriate. He felt it would be of benefit to the Borough to modify the property so it was conforming.
- g. Board Questions & Comments:
  - i. Mr. Keosky asked Mr. Swenson to repeat the existing and proposed lot dimensions.
  - ii. Mr. Van Embden asked about the demolition plan.
    - i. Ms. Newcomb responded that the intent is to demolish both structures but not immediately, which is why a bond will be provided for it. Mr. Klimashousky confirmed.
  - iii. Comm. vanHeeswyk asked Mr. Van Embden about the need for a bond as she understood the deed could not be filed without the structure demolished.
    - i. Discussion followed regarding demolition timelines, deed and plat filing timelines, performance bond and the permitted existence and continued use of the structure on a subdivided property.
    - ii. Ms. Newcomb reminded the Board members that the house is currently centered on two separate lots; the subdivision application was to reorient the division in a way to make both lots conforming, but unfortunately still left the primary structure crossing the two lots.
  - iv. Comm. vanHeeswyk asked why the applicant was filing for subdivision now if he did not have immediate intent use the lots independently.
    - i. Ms. Newcomb noted that the application was submitted in January and circumstances have changed since then creating some unknowns, therefore the applicant would prefer to provide the bond and retain the structure until a more appropriate time to proceed.
  - v. Mr. Casey stated that he understood the applicant's intent with realigning the lots and agreed with the process, including providing a bond for future demolition to occur.
  - vi. Mr. Keosky asked for clarification as to why a resolution approving this subdivision subject to the removal of the two structures within a specific amount of time was not reasonable.

- i. Ms. Newcomb responded that there was no need for a time frame at this time because essentially nothing is changing, other than the direction of the lot line.
      - ii. Mr. Swenson expressed concern in regards to the market at this time and the near future and the burden a time frame could create for the applicant.
      - iii. Mr. Van Embden stated that he feels the applicant as proposed makes reasonable sense, protecting the Borough's interest as well as the applicants'.
    - vii. Mrs. Busch asked if the Environmental Commission's comments had been provided to the applicant.
      - i. Mrs. Worthington confirmed it was.
      - ii. Mrs. Busch advised the board and applicant that the comments were written to address immediate demolition as opposed to the process that has been proposed. She requested that the comments be consulted at such time demolition will occur.
      - iii. Mr. Klimashousky commented that the mature trees referenced are outside of any building envelope available on the lot and therefore should not be disturbed.
      - iv. Ms. Newcomb advised the board that Mr. Klimashousky has agreed to keep in mind the comments regarding the sidewalk and fence, however, does not believe they can be considered conditions of approval.
    - viii. Mr. Sowers asked if the utility easement would affect the building envelope on proposed lot 1.01 (triangular shape).
      - i. Mr. Klimashousky and Ms. Newcomb confirmed it would not.
    - ix. Mr. Casey asked about blank items on checklists 1 and 2.
      - i. Checklist 1 item 10 in regards to plan size: Mrs. Worthington confirmed that the provided plans were of correct dimension.
      - ii. Checklist 2 item 19 regarding sight triangles: Mr. Swenson confirmed that the driveway proposed on lot 1.01 is not impacted by any sight triangles.
      - iii. Checklist 2 item 21 regarding other agency approvals and permits: Ms. Newcomb confirmed the only other required permit was from the County and that was pending.
      - iv. Checklist 2 item 31 regarding written Tax Assessor approval: Mr. Swenson and Ms. Newcomb confirmed they would provide copy of written approval for record.
    - h. Mr. Van Embden identified that it was not necessary to open to the public and summarized the Board's responsibilities regarding this application.
    - i. Mr. Van Embden asked for a motion in the affirmative to approve the application for minor subdivision with no variances, creating two conforming lots by moving the bisecting line 90 degrees from Yale Avenue where one only one conforming lot existed previously. The conditions on the approval would require that the applicant post a bond on the cost of demolition for the primary and secondary structures on the property and that the supplementary information per the missing checklist marks referenced by Mr. Casey be provided.
      - i. Motion was made by Mr. Keosky and second by Mr. Casey. The application was approved as all present voted aye.
6. Hearing for Application PB2020-02: 502 Oak Avenue, Block 1, Lots 64.01
- a. Applicant: Mr. and Mrs. Joseph Marra
  - b. Applicant's Representative: Mr. Daniel Reeves, Esq. of Monzo Catanese Hilleglass PC of Cape May Court House NJ.
  - c. Applicant's Professional: Ms. Pamela Fine, a registered architect of Cape May Court House NJ.
  - d. Mr. Reeves testified the following:
    - i. Property consists of a raised 1-1/2 story dwelling with a wrap around deck on front, side and rear sides of property as viewed from Oak Avenue.
    - ii. Applicant proposes to construct a roof over the rear portion of the deck with removable screens around this portion of the deck only. The footprint of the deck is not expanded in any way. The roof will be approximately 10' x 25' covering only an area of the existing deck.
    - iii. The property does have a pre-existing, non-conforming encroachment of the rear yard setback due to the irregular shape of the lot (not rectangular). The encroachment is 6' at the most extreme point.
    - iv. Relief is sought due to irregular shape of property as well as existing location of the structure on the property.
    - v. Noted that the project will not cause any further encroachment as the expansion would be vertical on the property.

- vi. Noted that the rear of the property is heavily wooded and therefore shielded by trees from view of neighboring properties.
- vii. Also noted that there is a pre-existing encroachment on the front yard setback of 8" at the most extreme point. The applicant is not seeking approval for this from the Board as the front of the property is not part of the proposed construction.
- e. Mr. and Mrs. Marra are sworn and testified the following:
  - i. Confirmed property purchased in 1996.
  - ii. Property is currently used personally on the weekends and summers; the property was a rental when initially purchased but has not been rented in 20 years and has no intention to rent the property.
  - iii. Mrs. Marra explained the project is necessary due to the sun exposure on the deck which makes it unusable. They have an existing awning but it must be closed for impending weather and is difficult to open and close due to size. The Marras are suggesting construction of a roof to provide a secure means of covering the deck but also minimizing sun exposure and thereby cooling the living room, which is adjacent to the deck. Mr. Marra also added that the deck cannot be used in the evenings when it is cooler due to mosquitoes.
  - iv. This is a proposed alternative to installation of central air, which is not desirable because they will have to keep all windows closed and add a noisy unit outside of the home. Roof structure will not be visible from Oak Avenue.
  - v. The Marras thought this was the best way to make the space usable day and night with minimal impact on surrounding properties.
- f. Ms. Fine presented her credentials and was accepted by Mr. Greenberg as an expert in architecture and design. She was sworn and testified the following:
  - i. She reviewed the plans via screen share (and Mrs. Worthington confirmed that the Board members had received a hard copy of the plans as well). She reviewed the area where the project is proposed and identified where the encroachment occurs. The existing setback from the rear deck to the property line is 14'.
  - ii. Reviewed the zoning chart, identifying all areas that meet zoning requirements, and noting the non-conforming front yard setback (19.4' where 20' is required) and the non-conforming rear yard setback (14' where 20' is required).
  - iii. The project does not create any new variances, but a variance is required to maintain and modify the existing non-conformity.
  - iv. The existing railings to remain, removable panels to be added, roof to be construction around existing balcony.
  - v. Construction is considered minor, without a need for major machinery, consisting of 9 posts and 2x8's for the roof.
  - vi. Does not feel there is any negative impact to the environment or the community due to minor construction and trees surrounding the structure but not being overhead where construction will occur.
  - vii. Reviewed the floor plan to show that from Oak Avenue the screened area would not be easily visible due to a 2' jog from the edge of the primary structure on one side and trees on the other side.
  - viii. Confirmed that due to angled lot line and location of existing structure, there is not much that can be done to address the applicant's concerns without seeking a variance.
  - ix. Feels that purposes of MLUL are advanced by this deviation by promoting health, safety and general welfare with compliant construction, reduced flood concerns due to elevation and screens, and reduced solar intake and cooling costs by shielding rear wall. Project also promotes light, air and open space as there are no solid walls and will be aesthetically appropriate and preserves character as change is modest and not easily visible from the street. Energy conservation is promoted as the project reduces energy and material costs, is an alternative to installing additional HVAC equipment and reuses existing railings.
  - x. Does not feel that approval of the application would cause detriment to the public good or impair the purposes of zoning for the reasons already provided.
- g. Board Questions & Comments:
  - i. Mr. Sowers asked about the existing chimney.
    - i. Ms. Fine indicated the chimney would be removed.

- ii. Mr. Marra confirmed that the chimney is no longer in service, as it was from a wood burning stove that has been removed.
  - ii. Mr. Hood asked about the means of securing screens during high winds.
    - i. Mrs. Marra advised that they would only be in use during summer months when wind is not as significant.
    - ii. Ms. Fine noted that they are removable and could be taken down in anticipation of severe weather. Mrs. Marra confirmed that was why a removable screen was being used.
    - iii. Mrs. Busch noted that their timing of use of the screens is outside of the scope of the Board.
  - iii. Mrs. Worthington noted that Environmental Commission reviewed the application and had no comment.
  - iv. Mr. Sowers asked about how water runoff from the roof would be addressed.
    - i. As rain gutters exist on the upper roof, Ms. Fine stated that rain gutters would be proposed on the porch roof as well.
  - v. Mr. Casey asked if adding gutters would adjust rear setback.
    - i. Mr. Reeves confirmed that gutters were not included in counting distance from property line.
  - vi. Mr. Casey asked if it would be appropriate to include a variance for the 8” encroachment on the front yard setback with this application.
    - i. Mr. Reeves stated that he would be agreeable to including the variance for the front yard encroachment, although the applicant is not legally obligated to ask for it at this time.
    - ii. Mr. Van Embden agreed to include.
  - vii. Mr. Keosky asked for confirmation of notification of properties within 200 feet.
    - i. Mrs. Worthington and Mr. Reeves confirmed.
  - viii. Mr. Casey asked if the waivers requested in the application checklist need to be addressed or in any way approved.
    - i. Mr. Van Embden stated that the application has been deemed complete.
    - ii. Mr. Reeves addressed by stating that upon review of the application, it was determined that many items, particularly in checklist 5, were not applicable to this application.
- h. Public Comment – 200 feet
  - i. Public portion opened at 8:29 pm on motion by Mr. Keosky and second by Mr. Murphy.
    - i. Helen Chezem – 501 Oak Avenue CMP
      - 1. Supports the application.
      - 2. Confirms she cannot see rear deck from her home, which is across the street.
      - 3. Feels that the increased use of deck and reduced energy bills are positive for the applicant.
    - ii. Mr. Keosky asked if anyone from the public who resides on Alexander was present. There was no response.
    - iii. Mr. Van Embden asked if there were any other members of the public who were interested in speaking. There was no response.
    - iv. Public portion closed at 8:32 pm on a motion by Mr. Murphy and second by Mr. Casey.
  - i. Mr. Van Embden asked for a motion in the affirmative to approve the application for variance relief for the rear yard setback and a notation that the front yard setback intrusion exists and is permitted to remain. That the applicant has asserted approval can be granted without detriment to MLUL and public good and does not impair the purposes of zoning. The applicant does not propose horizontal footprint, only vertically, and will maintain current vegetative cover to conceal these improvements.
    - i. Motion was made by Mr. Casey and second by Mr. Keosky. All present voted aye, except for Mayor Moffatt and Comm. vanHeeswyk.

7. Review of Annual Report

- a. Mr. Van Embden reviewed the purpose of the annual report and noted that, as there were no recommendations to be made, prepared a brief resolution so the report could be adopted.
- b. Mr. Casey noted that he felt that the historical record presented by these reports is important.
- c. Mrs. Busch noted that the Environmental Commission is also obligated to provide an annual report to the governing body, which is then posted on the Borough website and serves as a synopsis of the Commissions activities for the year.
  - i. Mrs. Worthington confirmed the report could be posted once adopted.
- d. Special Resolution SR PB2020-04: Annual Report

- i. Mrs. Worthington read the resolution aloud as requested by Mr. Casey.
  - ii. Mrs. Worthington noted that as a combined board, the report addresses all applications, not just variance applications.
  - iii. Motion made to adopt as written by Comm. vanHeeswyk and second by Mayor Moffatt. All present voted aye.
8. Historic Preservation Discussion
- a. Mr. Yunghans commented on the four things discussed at the January meeting in addition to the NJDEP presentation:
    - i. Request ordinance to delay demolition for 180 days and possible renewal of delay for additional 180 days
    - ii. Include Planning Board into demolition application process
    - iii. Create HPC team
    - iv. Request creation of a voluntary commission to manage the properties in the circuit rider list
  - b. Mr. Yunghans requested the Board's permission to proceed with these items in a more formal way.
    - i. Mr. Casey asked for clarification on what Mr. Yunghans' request was.
    - ii. Mr. Yunghans indicated he would work with Mr. Van Embden and Mrs. Worthington to request creation of the aforementioned ordinances from the Commissioners.
      - i. Mrs. Worthington inquired if a resolution was required to make recommendation to the Commissioners.
      - ii. There was discussion and Mr. Van Embden clarified that these ideas were not ready for the Board to vote or to recommend to the Commissioners, so Mr. Yunghans was asking for permission to continue investigating. Mr. Yunghans confirmed both.
      - iii. Mr. Greenberg stated that the subcommittee was still in the process of evaluating these ideas and believes the question is if the Board wanted to proceed with asking the Commissioners for the delay and notification while the other aspects of historic preservation are reviewed.
        - 1. Mr. Yunghans agreed he was trying to address the primary public concern that no one was aware that the demolition was impending for specific properties.
      - iv. Mr. Van Embden again clarified that it appears Mr. Yunghans is interested in the Board's opinion regarding the next steps.
        - 1. Mr. Yunghans agreed.
    - iii. Mr. Van Embden asked the Board members if a demolition delay was in best interest of the Borough.
      - i. Comm. vanHeeswyk noted that she requested a list of other towns who worked with demolition delays and information regarding just compensation.
        - 1. Mr. Yunghans and Mrs. Worthington confirmed the municipality list had not been received. Mrs. Worthington to follow up.
      - ii. Comm. vanHeeswyk also stated that she spoke with our CFO as Mr. Kinney advised regarding trust for just compensation expenses and he was unfamiliar and unable to provide guidance.
        - 1. Mrs. Worthington to follow up.
    - iii. Mrs. Busch asked if the demolition delay was intended to apply to all properties or just designated historic properties.
      - 1. Mr. Yunghans replied that it would apply only to the properties designated historic by the 2016 circuit rider.
    - iv. Mr. Casey asked what the authority of the circuit rider is. He was unable to locate reference to the document.
      - 1. Mr. Yunghans stated he received it from the state.
    - v. Mr. Greenberg asked the Board to provide feedback regarding demolition delay so it can be determined if the subject should move forward.
      - 1. Mr. Casey stated in order to move forward he needs source of equitable costs as explained by Mr. Van Embden previously, an authoritative list of historic properties and to understand the purpose of Planning Board notification.
    - vi. Mr. Yunghans stated that he is unsure the town is going to move forward with historic preservation based on his personal observations. He asked to confirm if the Board would like to continue investigation this topic and if so, more clear parameters and direction.

- vii. Mr. Murphy stated that he feels the Board should continue investigating. Finding out information from other towns who implement a demolition delay would be helpful in understanding impact.
- viii. Comm. vanHeeswyk feels that getting the requested information from Mr. Kinney is important and may identify quickly if this will work in the Borough.
- iv. Mr. Greenberg recalled that Mr. Kinney said the first step was to establish a Historic Preservation Commission so historic properties could be established which would then trigger a demolition delay ordinance. He suggested that due to the voluminous amount of work involved, that perhaps assistance could be provided by someone from the office.
  - i. Comm. vanHeeswyk indicated the Borough could assist.
- v. Comm. vanHeeswyk expressed concern about public perception of historic preservation. She stated she often hears how people are upset to lose a historic structure and that new construction is replacing it. Her understanding of a demolition delay is purpose of finding a new location, within or outside the Borough, where the structure can be relocated. She hopes people understand that a demolition delay does not necessarily mean structures will stay in town and new construction will reduce.
  - i. Ms. Kelly noted that sounds like an education issue for the public. She feels that despite the amount of work done so far, we are still early in the process.
  - ii. Comm. vanHeeswyk suggested a historic society for recognition it may be more effective.
  - iii. Mr. Yunghans recalled that Mr. Kinney had said even a historic structure is still private property.
- c. Mr. Keosky asked Mr. Yunghans to summarize what he is requesting for review at the next meeting.
  - i. Mrs. Worthington volunteered to assist Mr. Yunghans with the summary.

#### **Public Comment**

1. Public comment opened at 9:13 pm on a motion by Mrs. Busch and second by Mayor Moffatt.
  - a. Chris Meyerink – 421 Cambridge Avenue
    - i. Commended Planning Board members for completing virtual meeting.
2. Public comment closed at 9:14 pm on a motion by Mr. Keosky and second by Mr. Murphy.

#### **Board Information**

1. Mr. Greenberg expressed gratitude for the service provided by Mr. Fraatz to the Cape May Point Planning Board.
2. Mr. Casey expressed gratitude that the Board is looking into annual report and capital budget.
  - a. Mrs. Worthington advised the Board that she has an annual timeline posted at the office which now includes these items, to be completed annually at the appropriate time of year.

#### **Adjournment**

The meeting adjourned at 9:17 pm on the motion by Ms. Busch. All present voted aye.

Respectfully Submitted by:

Rhiannon Worthington

Board Secretary

Approved by Board 5/20/2020