

# **BOROUGH OF CAPE MAY POINT**

## **Planning Board**

### **Meeting Minutes**

**Wednesday, May 19, 2021 at 7:00 pm**

#### **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: Ms. Kelly, Dr. Pfendner, Mayor Moffatt, Comm. vanHeeswyk, Ms. Bassett, Mr. Greenberg, Mr. Murphy, Mr. Yunghans, Mr. Mullock, Mr. Sowers, Mr. Remy

Absent: Mr. Hood, Mrs. Leming

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

#### **Minutes**

The minutes from the April 21, 2021 meeting were approved on a motion by Mr. Sowers and second by Dr. Pfendner. All present voted aye except for Mr. Yunghans and Mr. Remy who abstained.

#### **Business**

1. Oath of Office was verbally administered Mr. Remy. Mrs. Worthington will witness.
2. Hearing for Application PB2021-01: 419 Cambridge Avenue, Block 25 Lot 19
  - a. Ms. Kelly recused herself due to residence within 200 feet. Dr. Pfendner was designated Chairperson for the hearing.
  - b. Applicant: Mr. Stephen DeMarco, located at 1070 Nicole Drive in Newtown Square, Pennsylvania.
  - c. Applicant's Representative: Mr. Christopher Gillin-Schwartz, Esq. of Gillin Schwartz Law, located at 1252 Route 109 in Cape May, New Jersey.
  - d. Applicant's Professional: Mr. Adam Crossland of Bachich Associates, located at 3323 Simpson Avenue in Ocean City, New Jersey.
  - e. Dr. Pfendner expressed concern regarding proceeding with hearing after being denied access to the property earlier that day for inspection.
    - i. There was discussion among the Board members, the applicant's attorney, the applicant, and the Board attorney regarding access and it was decided that the hearing would proceed and the Board could revisit the importance of site visit in regards to this application prior to vote.
  - f. Mr. DeMarco and Mr. Crossland were sworn.
  - g. Mr. DeMarco testified the following:
    - i. He apologized for denial of access to property earlier in the day.
    - ii. He reviewed the item in the Board Engineer's Review letter:
      - i. The shed shown on the survey does not match the architectural print. Mr. DeMarco stated that he decided to reduce the shed size to increase yard space prior to certificate of occupancy.
      - ii. Retaining walls shown on the survey do not match the architectural print. Mr. DeMarco stated that they were modified to accommodate the existing trees and soften the streetscape prior to certificate of occupancy.

- iii. The rear patio shown on the survey is indicated as slate paver. Mr. DeMarco said the survey is not accurate – slate pavers were only installed on the steps, but the patio was constructed of ECO Pavers prior to certificate of occupancy.
  - iv. Landscaping shown on the survey does not match the architectural print. Mr. DeMarco indicated a landscape architect was hired during construction but landscaping at this time remains the same as when certificate of occupancy was issued.
  - v. Front stairs shown on the architectural print are not shown on the survey. Mr. DeMarco confirmed that the front stairs were not constructed.
  - vi. Privacy wall at rear of the property shown on the architectural print are not shown on the survey. Mr. DeMarco confirmed that privacy wall was not built, landscaping was installed instead prior to certificate of occupancy.
  - vii. Outside shower shown on the architectural print is not shown on the survey. Mr. DeMarco confirmed that the outside shower was not constructed.
  - viii. Privacy fence is not shown on the survey. Mr. DeMarco stated that the privacy fence was installed in place of the previously mentioned privacy wall after certificate of occupancy was issued. All necessary permits and approvals were obtained.
  - iii. Overall, many of these differences were caused by changes made during construction, prior to certificate of occupancy. Noted that the choices made that vary from the proposed plan reduced the overall floor area ration (FAR) from 2,251 sq. ft. to 2,244 sq. ft.
  - iv. Acknowledged how Mr. Crossland’s plan, which was based on the construction CAD and contains information not accurate to the as built survey, could be confusing to the Board members.
  - v. Stated that he will build a pergola which is approved by-right if the application is denied, but is seeking relief from the Board because a covered roof porch is preferred.
  - vi. Seeking relief because he feels that a covered porch roof would enhance the aesthetic and be more functional. If denied, the porch will be used in the same way as a pergola but have less shade.
  - vii. The homeowner works for a builder of multi-family structures of hotels and apartments in areas from Pennsylvania to Virginia that has existed for 50-60 years. Very familiar with process of land development and construction.
- h. Board Questions
- i. Dr. Pfendner stated that she wants to personally verify that there is nothing in the rear yard not indicated on the survey, which would expand the FAR further than already being asked. She also stated that she always visits properties prior to a hearing to verify the existing conditions and reminded all Board members that it is their duty to thoroughly review all applications.
  - ii. Mr. Sowers asked why there were no additional drawings provided to show elevations and provide better understanding of intent.
    - i. Mr. Demarco responded that they didn’t feel they were necessary as the roof line would be the same whether a pergola or metal roof were installed. He indicated renderings or elevations could be provided.
  - iii. Mr. Yungmans expressed concern regarding water runoff.
    - i. Mr. DeMarco responded that the covered roof would pitch to the front yard, not the side yard, and as the patio currently exists, the property currently manages the water sufficiently.
    - ii. Mr. Crossland indicated drainage was addressed during construction and he could provide the grading/drainage plan for the Board’s reference.
  - iv. Mr. Mullock asked if there was intention to enclose the porch in the future.
    - i. Mr. DeMarco responded that there was no intention to enclose the porch.
    - ii. Mr. Mullock asked Mr. Van Embden to clarify, if this application is approved, if there would be any further review required by the Planning Board prior to being able to enclose the porch.
      - 1. Mr. Van Embden advised the Board that there was no means in regards to zoning to stop the porch from being enclosed once it was approved and included in FAR.
      - 2. Mr. DeMarco suggested a restriction against enclosing the porch be included as a condition of approval or as a deed restriction.
  - v. Ms. Bassett asked for clarification about the indication that they would have a pergola with a roof.
    - i. Mr. DeMarco responded that the structure would be the same but one would have a roof, but no, they were not building a pergola and adding a roof.

- ii. She agreed that elevations would have been helpful.
- vi. Mr. Sowers asked whether the applicant considered other means to increase shade with the pergola. He indicated that if the purpose of the porch can be achieved without a variance it was preferable. The zoning ordinances are designed for a specific reason and any time a variance is granted, a divergence is created, which is a detriment to the public interest to some extent.
  - i. Mr. DeMarco stated that he had but preferred to construct the covered porch.
  - ii. Mr. Crossland displayed a rendering of the house structure from the design phase with the porch pergola, indicating this was the approved design.
- vii. Mr. Sowers stated that he felt the original intent shown on the drawings is more in line with the community and zoning goals.
- viii. Mr. Greenberg asked how much the FAR would increase if approved, how much square footage would increase and if the house would be in line with other property frontages.
  - i. Mr. DeMarco replied that the existing FAR is 0.42, the proposed FAR is 0.45. It was noted that the original plans indicated the project was to be under the permitted FAR by 0.01. He also replied that a total of 160 square feet would be added to FAR and the the front yard setback would not change because the existing patio is not being expanded.
- ix. Mr. Greenberg summarized that the application was to add a roof, increasing FAR by 160 square feet, exceed the amount of FAR permitted by the ordinances, and it was not included in the original structure when submitted for zoning approval.
  - i. Mr. Gillin-Schwartz referenced MLUL regarding requirements for reviewing D4 variances. He noted that there would be no increase in density as it is not a “living space” per MLUL and case law. He also noted that the space would be utilized whether the application is approved or denied.
- x. Dr. Pfendner stated that she preferred the pergola with greenery for shade and aesthetics as opposed to a covered roof structure. She also stated that many houses have been built within the permitted FAR and that the request is contrary to the goal of the ordinance.
- xi. Mr. Sowers asked for clarification on the argument that the use would be the same whether the structure had a roof or not, as he believes the difference in use is implied by covered structures being included in FAR.
  - i. Mr. Gillin-Schwartz stated that he meant the use would be the same as opposed to a bedroom or other living space.
- xii. Mr. Mullock asked if Mr. McGraw had reviewed the request prior to application to the Planning Board.
  - i. Mrs. Worthington indicated that the application submission was reviewed by Mr. McGraw and other Board Professionals prior to completeness review.
  - ii. Mr. McGraw clarified and responded he did not receive a zoning permit application regarding the request.
  - iii. Mr. Mullock asked if this constituted an appeal or is this standard process
  - iv. Mr. McGraw replied that if they had applied and been denied, they would have had an appeal and a variance request. Submitting the variance request without prior zoning review assumes that their request does not comply with current zoning. He said the usual practice is for applicants to go directly to the Board; they seldom come for zoning review first, so this is not abnormal.
  - v. Mr. Gillin-Schwartz stated he contacted Mr. McGraw in the fall of 2020 with inquiry about the intended design.
- xiii. Mr. Greenberg asked whether the applicant was going through this process and adding the covered porch now because doing so during construction would have required design modifications at that time to stay within FAR.
  - i. Mr. Gillin-Schwartz responded yes.
- xiv. Mr. Murphy stated that the review question about the rear patio being larger on the survey than the architectural print was not addressed during the applicant’s testimony.
  - i. Mr. DeMarco responded that he does not believe the size changed but even if the rear patio was larger, it would still be within compliance per the as built survey.

- xv. Mr. Murphy asked why the project was not better planned if the homeowner was an experienced builder.
  - i. Mr. DeMarco responded that he did not complete the porch structure during construction because he was not fond of the design, not because of lack of planning. He was aware that this application would be required either way and is choosing to proceed now with what they feel is the best use of the space.
- xvi. Mr. Murphy stated that he was not inclined to proceed with deed restrictions because they often were ineffective over time.
- xvii. Mr. Yunghans expressed concern about precedence, particularly with FAR.
- xviii. Dr. Pfendner provided the following summary:
  - i. The applicant is requesting to build a covered structure over his existing patio on the front of his home instead of a pergola. This would increase the FAR by 160 square feet, bringing it from 0.42 which is in compliance to 0.45 which is not. Plans for structure and drainage have not been provided. The changes from the original plan to the CO survey are apparently correct on the survey, but have not been verified by onsite inspection. The applicant feels that the proposed roof would enhance the aesthetics of the property and would not change the usage.
- i. Mr. John McGraw, Zoning Official, was sworn and testified the following:
  - i. Dr. Pfendner asked for clarification on his review comments indicating there is a use difference between a pergola and a covered porch. She also asked for his input as to whether the porch could be enclosed without further review by the Planning Board or Borough.
    - i. Pergolas are generally permitted as they don't provide weather protection and generally provide a place to hang plants, but are not considered a structure and are freestanding. Once the pergola has a roof, it becomes a structure and must be built 10 feet away from the primary structure. Once a pergola is attached to the house it becomes part of the house, and becomes part of FAR. Any structure that is included in the FAR calculation can be enclosed or otherwise manipulated without further approvals other than zoning construction review.
  - ii. Mr. Mullock asked about specific instances where this has occurred.
    - i. Provided 103 South Lake as an example of a property with a freestanding pergola because the deck they requested was not included in their original plans.
    - ii. Dr. Pfendner added that she too has a pergola with vegetative growth at her front door because adding a roofed structure would have increased FAR.
  - iii. Noted that the rendering shown by Mr. Crossland was not a pergola, as it was attached to the house and he has not reviewed or approved the design.
  - iv. Clarified that although the FAR was increasing "only" 3%, the floor area was increasing from the permitted 2,100 square feet to 2,260 square feet, and increase of 7.6%.
    - i. Mr. Gillin-Schwartz advised that the application needs to be looked at beyond the numbers but at the use of the space and the fact is, the space is will be used for deck chairs and fair weather as a pergola or covered porch.
  - v. Asked the applicant if the porch or pergola would be attached to the house.
    - i. Mr. DeMarco responded that it would be attached to the house with support columns opposite the house.
    - ii. Mr. McGraw clarified that this would be considered an addition.
- j. Hearing was opened to the public at 8:22 pm on a motion by Mr. Sowers and second by Mr. Yunghans.
  - i. Public within 200 feet
    - i. Mr. Tim Lisle – 417 Cambridge Avenue
      - 1. Does not support the application.
      - 2. Believes that development on the site to date has been pushed to the limits of the site and the detriment of the neighbors.
      - 3. Suggested obtaining a new survey to confirm site is currently compliant.
      - 4. He is an architect, and during his own construction he made compromises to meet his end goal within the constraints of the zoning ordinances.
      - 5. Does not see a hardship.

6. Concerned about apparent lack of documentation and zoning table submitted for review.
  7. Concerned about lack of discussion of structural design and potential effect on neighboring properties.
- ii. General Public
    - i. None.
- k. Hearing was closed to the public at 8:28 pm on a motion by Dr. Pfindner and second by Mr. Murphy.
  - l. Findings of Fact
    - i. Mr. Greenberg summarized that the request was for a FAR variance for a permanent structured roof Deferred to Mr. Van Embden regarding what Board members are required to consider in regarding a D variance.
    - ii. Ms. Bassett stated she did not support the application as it goes against FAR and she does not see a hardship.
    - iii. Mr. Murphy stated there was inadequate information provided but regardless does not support an increase in FAR and feels that the town is losing its heritage. He does not support a deed restriction. He would request more clear materials as he cannot determine the positive and negative criteria from what was provided.
    - iv. Mr. Yunghans stated he did not support the application as the home is beautiful as it is and does not believe a FAR variance is appropriate for aesthetic only.
    - v. Mr. Greenberg stated that the request was inconsistent with the Master Plan and detrimental to the community. He agreed the home is beautiful as it is and will not add anything positive to ongoing development concerns. He also had concerns about effectiveness of deed restrictions as previously stated by Mr. Murphy.
    - vi. Mr. Sowers stated that he did not support the application. He does not see that the positive criteria, item ( i ), to promote a positive visual environment, has been met because the submitted drawings were inadequate to determine a visual of the proposed structure or that it is an inherently beneficial use to the community. The negative criteria is that it is a variance, and that divergence is a detriment to the public interest, and that it is not consistent with the Master Plan. Mr. Sowers expressed concern about the parallel of use between an uncovered patio and a covered patio, and stated that if patios are “entitled” to a roof then they may need to be considered part of FAR as well.
    - vii. Mr. Mullock asked if he was a voting member on this application, Mrs. Worthington stated he was. He then stated that he did not support the application as FAR was the most important means of design control and should not be approved unless applicant can show it is making a significant contribution to the community or it was suffering serious harm. He believes a pergola with plants would be more in line with the community.
    - viii. Dr. Pfindner stated that the applicant had not met their burden by explaining substantial improvement to the community or the positive criteria of the application. She confirmed that the negative criteria had not been met. She also stated that she did not believe the application was properly submitted and that a deed restriction was not an effective means of enforcement.
    - ix. Mr. Remy stated that although he was a new member, his impression was that the application would have been better received if it had been more complete.
  - m. Dr. Pfindner and Mr. Murphy asked if the applicant wanted to postpone the vote and waive the tolling of time to allow for a submission of additional information and site visits.
    - i. Mr. Gillin-Schwartz asked if the Board could be polled to assess if additional information would have any potential to change the way Board members intend to vote.
    - ii. A poll of the voting board members indicated it would not alleviate their concerns.
  - n. Mr. Van Embden recommended a motion in the affirmative to approve the applicant’s request for a D-4 variance as submitted.
    - i. Motion was made by Dr. Pfindner and second by Mr. Sowers. Ms. Bassett, Mr. Murphy, Mr. Yunghans, Mr. Greenberg, Mr. Sowers, Mr. Mullock, and Dr. Pfindner voted nay. The application was not approved.
3. Hearing for Application PB2020-06: 517 Pearl Avenue and 303 Brainard Avenue, Block 11 Lots 1 & 2
    - a. Ms. Kelly returned as a Board member and Chairperson.

- b. Applicant: Cape Manor LLC, located at 7 Arthur's Court in Erma, New Jersey was represented by the Principle, Mr. George Davis, located at 16 Romney Place in Cape May Court House, New Jersey.
- c. Applicant's Representative: Mr. Cory Gilman, Esq. of Josephson Wilkinson and Gilman, located at 2699 Dune Drive in Avalon, New Jersey.
- d. Applicant's Professional: Mr. John Kornick, P.P., P.E. of KS Consulting Engineers, Inc., located at 36 Tanner Street, Suite 100 in Haddonfield, New Jersey.
- e. Mr. Davis and Mr. Kornick were sworn.
- f. Mr. Gilman presented the following:
  - i. Cape Manor LLC is a development entity of Hawthorne Davis, who would be purchasing and developing one of the proposed lots.
  - ii. The lot is currently owned by Mr. Shawn Clark. The lots were merged due to encroaching structures and single ownership. The lot is 100 x 100 and contains two (2) single family homes with accessory improvements.
  - iii. The intention is to re-subdivide the existing lots into two (2) permitted size lots of 50 x 100.
    - i. Lot 1 on Pearl Avenue will be retained by Mr. Clark and remain as is, including the existing structure and improvements.
    - ii. Lot 2 on Brainard Avenue will be sold to Cape Manor LLC. All non-conformities will be removed and a conforming structure will be built.
  - iv. Minor subdivision approval is requested, with the lots being completely conforming to R-1 requirements with the exception of the side yard setback on lot 1.
- g. Mr. Kornick was accepted as an expert and testified the following:
  - i. Referenced subdivision and variance plan dated 5/10/2021.
  - ii. Mr. Kornick displayed the referenced subdivision plan and several aerial photos of the subject property. The properties are two (2) existing lots by deed and located in the R-1 district.
  - iii. The first lot is 50 x 100, totaling 5,000 square feet, and includes an existing 1-1/2 story structure that will remain. The property includes an existing hot tub which predates the ordinance of 1974. The second lot is 50 x 100, totaling 5,000 square feet, and includes a dilapidated home which will be demolished.
  - iv. He reviewed the lot coverage and setbacks on lot 1.
    - i. Existing conforming lot coverage of 26.3% where 30% is permitted, including the house, covered porch, shed, hot tub and A/C unit. Steps, bricks and patios are not included.
    - ii. Existing non-conforming front yard setback from Pearl Avenue of 5.3 feet and existing conforming front yard setback of 25.5 feet from Brainard Avenue.
    - iii. Existing non-conforming setback from the shed to the side lot line of 0.5 feet where 5 feet is required.
    - iv. Existing conforming rear yard setback of 38.5 feet where 20 feet is required.
    - v. Existing shed is 4.75-6.4 feet from the primary structure where 10 feet is required.
  - v. Existing structure on Lot 2 will be demolished so existing coverage and setbacks are irrelevant.
  - vi. The primary structure on Lot 1 FAR was calculated per the ordinance definition with a partial second floor at 0.266 or 1,333 square feet, including 75 square feet of space on the second floor with a ceiling height at 7 feet or higher. With the shed included the FAR increases to 0.2854 or 1,427 square feet, which is still below the maximum permitted of 0.42.
  - vii. Aerial photo from the NJDEP website shows the lot 1 with primary structure as it exists today, indicating construction pre-dates ordinance of 1974. The property has changed with improvements that are not static such as brick pavers, hot tub and patio furniture. The property is a unique corner lot that has similar setbacks to other structures in the community. Reviewed various aerial views where the existing hot tub appears to be present prior to enacting of the Borough pool ordinance.
  - viii. Reviewed the definition of non-conforming structures per MLUL and the Borough pool ordinance enacted in November of 2020.
  - ix. Summarized that relief is being sought for front yard setback, side yard setbacks and distance between structures.
  - x. Explained why he interprets that the hot tub meets the definition of a non-conforming structure. It is in the front yard because it is corner lot and predates prohibiting ordinance.

- xi. In accordance with C-2 variance requirements, must show that the variance benefits the community by improving local zoning and planning:
  - i. Variance is needed specifically for this property.
    - 1. Site is suited for use.
    - 2. Density is not increasing.
    - 3. Existing structures pre-date current ordinances.
  - ii. Advances the purpose of municipal land use law.
    - 1. (c) Provides adequate air, light and open space – increase space between structures with new construction on lot 2.
    - 2. (i) Promote a desirable visual environment through creative development techniques of good civic design and arrangement – dilapidated structure on lot 2 would be demolished and replaced with a structure that will enhance the neighborhood.
  - iii. Benefits of the deviation substantially outweigh detriment.
    - 1. Zoning ordinance and master plan account for proposed density.
    - 2. Two existing single family homes.
    - 3. Does not find that there are any negative criteria.
    - 4. Does not substantially impair the intent and purpose of the zoning ordinance or Master Plan within the community.
    - 5. The existing non-conformities exist among multiple homes within the community.
    - 6. No discernible off site impact.
- h. Mr. McGraw testified the following:
  - i. There is an ordinance regarding the sale of merged lots owned by one owner, which requires the owner to obtain a variance for any non-conformities that would be created by subdividing the lots.
    - i. Mr. Kornick noted that the merged lots create one lot with two primary structures, which is not permitted in the zoning district.
  - ii. Complimented presentation overall. Clarified means of determining FAR on second floor of existing structure on lot 1, which should be counted from areas 4 feet in height, not 7 feet, but indicated the total was still not significant for the purposes of this hearing.
  - iii. Noted that the hot tub was installed and energized without permits. Previously the existing hot tub was used as a planter and later was removed.
- i. Board Questions
  - i. Mr. Sowers asked what impact the shed being 6 inches from the property line have on lot 2.
    - i. Mr. Kornick indicated that the side yard setback on the common lot line will be 10 feet in order to maintain distance between structures. Per the required 5 feet per side minimum/15 feet total minimum, a 5 feet side yard setback on the east property line of lot 3 will ensure there is 10 feet or more between the existing structure on lot 3 and proposed structure on lot 2.
  - ii. Mr. Sowers asked for clarification as to whether or not a variance is needed for the existing non-conformities.
    - i. Mr. Kornick stated that his interpretation indicates a variance would not be needed, but the Board Engineer and Solicitor indicate that it is necessary.
  - iii. Mr. Mullock asked if any structures on lot 1 would be demolished.
    - i. Mr. Kornick responded that lot 1 was to remain as is.
  - iv. Dr. Pfendner indicated her primary concern is about the location of the existing shed structure and asked if the shed could be relocated. She noted that due to site layout there is no back yard for placement of the hot tub.
    - i. Mr. Kornick responded that Mr. Clark wants to maintain current structures on the property. This question has been asked and Mr. Kornick is making all efforts to work around the existing conditions with modifications to lot 2.
  - v. Mr. Sowers agrees with Mr. Kornick's interpretation of the non-conformities and advised other Board members to consider the option. He also asked about timetable for demolition of structures on lot 2.
    - i. Mr. Kornick deferred to Mr. Davis but said he would expect it to be quickly or due to summer activity, in the fall.

- ii. Mr. Kornick and Mr. Van Embden advised that the subdivision plan and/or the deed cannot be filed until the structure has been demolished.
  - vi. Mr. Mullock asked about possible future changes to lot 1.
    - i. Mr. Kornick and Mr. Gilman confirmed the lot is to remain as is.
    - ii. Mr. Gilman advised that by not providing a variance for the existing non-conformities, Mr. Clark would be unable to expand or modify the structure without obtaining a variance.
  - vii. Mr. Yunghans asked if the boat and hot tub would remain.
    - i. Mr. Gilman responded that the request was for the hot tub to remain. He indicated that he was unsure about the boat but indicated it would be a borough violation and therefore is not a matter to be considered with this application.
  - viii. Mr. Mullock asked if Mr. Clark would agree to move the hot tub.
    - i. Mr. Gilman stated that Mr. Clark intends to retain his improvements exactly as they are.
    - ii. Mr. Kornick indicated that even if the hot tub was moved to the south side of the house, it would still be in the front yard.
    - iii. Mr. Sowers noted that the structure is not static and therefore could be moved whenever the homeowner chooses; leaving him to believe there is no gain to this argument.
    - iv. Mr. Kornick indicated there was no good location to move it to and felt it was fairly well hidden by the vegetation in its current location.
    - v. Dr. Pfendner suggested waiting for public comment before further discussing the hot tub. Mr. Gilman agreed.
- j. Hearing was opened to the public at 9:50 pm on a motion by Mr. Sowers and second by Ms. Bassett.
  - i. Public within 200 feet
    - i. Mr. Michael Ballinger – 305 Brainard Avenue
      - 1. Supports the application and is happy to see the improvement of an eyesore in the community.
      - 2. Expressed concern about the new structure being placed 5 feet from his property line. He believes that approving the existing non-conformity on lot 1 moves the new structure closer to his property than it would be with a conforming structure on lot 1.
        - i. Mr. Kornick stated that the new structure will be at least 12.7’ from his house.
        - ii. Mr. Gilman indicated that 5 feet is the minimum side yard setback required by zoning ordinance.
    - ii. Mr. Rob Stambaugh – 313 Brainard Avenue
      - 1. Supports the application and is happy to see the improvement of lot 2 but is still concerned about lot 1 remaining as is.
  - ii. General Public
    - i. None
- k. Hearing was closed to the public at 9:56 pm on a motion by Mr. Sowers and second by Dr. Pfendner.
- l. Findings of Fact
  - i. Mr. Sowers stated that the thorough presentation was helpful in understanding the benefits of accepting the non-conformities without granting a variance. Improvements to lot 2 support all positive criteria of MLUL. He would grant the subdivision and leave lot 1 as status quo.
  - ii. Dr. Pfendner had no further comment.
  - iii. Mr. Mullock stated that the improvements suggested for lot 2 outweigh his concerns for lot 1.
  - iv. Mr. Greenberg and Mr. Yunghans stated they agreed with Mr. Sowers.
  - v. Mr. Murphy stated that he does not find any negative aspects to approving the application and that lot 1 could be dealt with in the future.
  - vi. Ms. Kelly stated that she believes what the applicant has presented moves the community forward in a positive way.
  - vii. Ms. Bassett stated she was still concerned about the shed 6 inches from the lot line but believes that all other aspects outweigh it. For the reasons stated, she believes the Board should accept the non-conformities instead of issuing a variance.
  - viii. Mr. Remy stated that he feels that the application addresses concerns and is a benefit to the community.

- ix. All members made positive comments on Mr. Kornick's presentation.
  - m. Mr. Van Embden recommended a motion in the affirmative to approve the subdivision for two conforming size lots, recognizing that the two lots were merged due to common ownership and the improvements were accomplished prior to current zoning, acknowledging the existing non-conformities on lot 1 and that lot 2 will be cleared of all improvements and subsequent development will conform to all current zoning requirements. There will be no granting of a variance and therefore no restrictions or permissions on the property so in the future any applications, modifications, changes in use or density on the lot will be a trigger for Planning Board review. The Board is confirming there are existing non-conformities but there is no need for a variance and they are being accepted as they exist and detailed in the application.
    - i. Motion was made by Mr. Sowers and second by Mr. Murphy. Ms. Bassett, Ms. Kelly, Mr. Murphy, Mr. Yunghans, Mr. Greenberg, Mr. Sowers and Dr. Pfendner voted aye. The application was approved.
4. Review of Proposed Ordinance 03-2021: Cannabis Businesses
- a. Mrs. Worthington summarized the request from the Commissioners.
  - b. Mr. Van Embden reviewed the ordinance and the implications of accepting or not accepting the regulations provided by the state at this time. He indicated to the Board that since there were no commercial zones and no room to grow cannabis, the Borough was already compliant.
  - c. Motion was made by Ms. Kelly and second by Mr. Mullock. All present voted aye.
  - d. Mrs. Worthington indicated she would notify the Commissioners of the Board's recommendation and provide copy of the resolution after the next meeting.
5. Comm. vanHeeswyk asked the Board how they felt about banning the smoking of cannabis in public places in the Borough. Discussion indicated that the Board generally agreed with the restriction although they had concerns about enforcement and cannabis use in public places that are not specifically restricted (i.e. walking on the street, similar to smoking a cigarette).

**Public Comment**

None

**Board Information**

None

**Adjournment**

The meeting adjourned at 10:22 pm on the motion by Dr. Pfendner. All present voted aye.

Respectfully Submitted by:

Rhiannon Worthington

Board Secretary

Approved by Board 6/21/2021