

BOROUGH OF CAPE MAY POINT

Planning Board

Meeting Minutes

Wednesday, October 21, 2020 at 7:00 pm

Cape May Point Fire Hall

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

Absent: None

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

Minutes

The minutes from the September 16, 2020 meeting were approved on a motion by Mr. Keosky and second by Comm. vanHeeswyk. All present voted aye except for Mr. Hood who abstained.

Business

1. Hearing for Application PB2020-05: 303 Knox Avenue, Block 9, Lots 2 & 3
 - a. Applicant: Mr. Richard Burke
 - b. Applicant's Representative: Mr. Jeffrey Barnes, Esq. of Barnes Law Group LLC, located at 111 East 17th Avenue in North Wildwood NJ.
 - i. Mr. Barnes testified the following:
 - a. Property is currently 100 x 100 for a total of 10,000 square feet.
 - b. Mr. Burke is the contract purchaser. Owner is Wolf R. Veith.
 - c. Located in R-1 zoning district.
 - d. There is an existing single-family home that straddles the lot lines.
 - e. The applicant is seeking to create a two (2) lot minor subdivision to create two conforming lots.
 - f. The structure will be demolished entirely before map filing with the County, as is required.
 - c. Applicant's Professional: Mr. Dante Guzzi of Guzzi Engineering, located at 203 South Main Street in Cape May Court House NJ
 - i. Mr. Guzzi was sworn and accepted as an expert. He testified the following:
 - a. Guzzi Engineering performed a survey and prepared the minor subdivision plan that was submitted with the application.
 - b. The subdivision would create two lots that conform to zoning and R-1 standards. Each lot would be 50 x 100, 5,000 square feet, and is typical for the street. The division would be along the existing lot line. No variances are required or requested.

- c. No architectural plans have been submitted but no variance relief is anticipated. This will be verified when the zoning permit is requested. It is anticipated that a 3-4 bedroom home with required parking will be constructed on each lot.
- d. All trees with a diameter 34” and larger on the lot are shown on the plan.
- e. The review report from Van-Note Harvey was reviewed and a revised plan was submitted addressing all comments.
 - 1. Mrs. Worthington confirmed that all Board members received the revised plan in their hearing packages.
- d. Board Questions
 - i. Mr. Murphy asked why a subdivision was necessary if the property was already two lots. He asked how the tax assessment listed the properties and their sizes.
 - a. It was indicated by Mr. Guzzi and Mr. Barnes that the lots were likely combined for tax purposes since the house was on both lots, and now had to be formally separated.
 - b. Mr. Guzzi confirmed that the tax files listed the property as “Lot 9, Blocks 2 and 3, 100 x 100 lot.”
 - ii. Mr. Murphy asked about the pending bamboo ordinance and how that might affect approval since there is bamboo shown on the property.
 - a. Mr. Guzzi was unsure if it impacted this application but stated that the applicant would comply with all zoning requirements.
 - iii. Mr. Greenberg asked Mr. Van Embden to review the need for subdivision when there are two lots and a shared structure.
 - a. Mr. Van Embden responded that this map used to have lines separating lots 2 and 3, but because of the house being in the center, there is such a thing as the doctrine of merger, which allows lots to be combined for purpose of administration and taxing when utilized as a single lot. For the applicant to utilize the lots as two separate lots, he must come back before the Board and redraw the line and promise to remove the structure. There is no special permission or variance required for approval. It provides assurance that the lots can be marketed and developed separately. There will be a condition to remove the existing structure and modify the existing parking area.
 - b. In acting as a Planning Board for this application, approval would confirm the applicant is compliant, addressed the issues, described the property correctly and is zoned for proposed development.
 - iv. Mr. Van Embden advised the Board that since this is a minor subdivision application, it was not necessary to open this hearing to the public. Mr. Barnes agreed.
- e. A motion was made in the affirmative to approve the application by Mr. Greenberg and second by Mr. Casey. All voting members voted aye.
- f. Mr. Barnes noted that a member of the public was present in relation to the application and suggested it appropriate to allow them to speak.
- g. Public Comment
 - i. Mr. Michael Bookman – 307 Knox Avenue, CMP
 - a. Has been at neighboring property for 18 years and bamboo is a concern because it has spread to several adjacent properties. Wanted to make sure it was addressed accordingly.
 - b. Also expressed concern about invasive trees (alanthus) on the property.
 - 1. Ms. Busch noted that the Alanthus tree is listed in the ERI inventory as an invasive tree that should be addressed. It also the tree the spotted lantern fly is drawn to.
 - c. Mr. Barnes agreed that a condition in the resolution that the bamboo and invasive tree would be removed as part of demolition was acceptable. He asked that Mr. McGraw be aware of the request for the trees to be removed for purpose of minimizing the attraction of the spotted lantern fly. Ms. Busch indicated that stump must be treated with an herbicide to kill the roots and prevent regrowth.
 - ii. Mr. Scott Smith – 301 Knox Avenue, CMP

- a. Asked which “improvements” would be removed as indicated in the application.
 - b. Mr. Guzzi responded that the house and existing utility connections, out structures and driveway would be removed. He noted that as recently agreed, the bamboo and Trees of Heaven would also be removed.
 - iii. Ms. Sandra Allison – 305 Alexander Avenue, CMP
 - a. Asked about higher elevation of property and how that would be managed during demolition.
 - b. Mr. Guzzi responded that the plan was not to remove fill from the site during demolition, but the individual lots would be graded per code when developed. There will be no additional water shed onto neighboring properties.
 - iv. The hearing was closed to the public on a motion by Mr. Keosky and second by Mr. Greenberg.
 - h. A motion was made in the affirmative to approve the application with the conditions that the bamboo and Alanthus tree be removed by Comm. vanHeeswyk and Ms. Busch second. All voting members voted aye.
2. Resolution SR PB2020-07: Recommendation Regarding Future Pool Regulations
 - a. Mr. Van Embden summarized that the resolution memorialized the recommendation made by the Board at the previous meeting.
 - b. Motion was made by Mr. Greenberg and second by Ms. Busch. Mr. Greenberg, Mr. Keosky, Mayor Moffatt, Comm. vanHeeswyk, Mr. Yunghans, Ms. Busch, Mr. Murphy, Mrs. Leming, Ms. Kelly and Mr. Sowers voted aye.
3. Resolution SR PB2020-08: Recommendation Regarding Existing Pool Regulations
 - a. Mr. Van Embden summarized that the resolution memorialized the recommendation made by the Board at the previous meeting.
 - b. Motion was made by Mr. Greenberg and second by Mayor Moffatt. Mr. Greenberg, Mr. Keosky, Mayor Moffatt, Comm. vanHeeswyk, Mr. Yunghans, Mr. Casey, Ms. Busch, Mr. Murphy, Mrs. Leming, Ms. Kelly and Mrs. Sowers voted aye.
4. Discussion regarding proposed Ordinance No. 10-2020 and 11-2020.
 - a. Mr. Van Embden advised the Board that their role in review was to advise the Commissioners if the proposed ordinance is consistent with the Master Plan.
 - b. Mr. Casey noted that procedurally, per the letter from the Municipal Clerk, discussion only concerns Ordinance No. 10-2020 since recommendation is limited to ordinances that modify section 150.
 - i. Mrs. Worthington confirmed that she did distribute both ordinances for reference.
 - c. Mr. Greenberg asked Comm. vanHeeswyk to share her comments regarding how this ordinance is supported by the Master Plan.
 - i. The Master Plan sets forth goals, primarily the preservation of Lake Lilly in its restored state.
 - ii. The Borough is on desalinated water for drinking and cooking and therefore water conservation shall be emphasized.
 - iii. Under Policy, provides that code provisions designed to manage development should be designed to manage conservation of permeable land surface.
 - iv. Under Policy, provides that in effort to control the quality of water runoff into Lake Lilly, homeowners are encouraged not to use chemical fertilizers.
 - d. Mr. Greenberg asked Mr. Casey to share his comments regarding how the ordinance is not supported by the Master Plan.
 - i. It is acknowledged that New Jersey Courts have a precedent that swimming pools are an implied accessory use for single family dwellings, which is what the R-1 zone is.
 - ii. Regarding swimming pools being incompatible with Master Plan objective to maintain building lots in the vegetative state to the maximum extent possible, the zoning ordinance has provisions for lot and vegetation coverage that address this concern.
 - iii. Regarding rainfall, an uncovered pool would capture rainwater, fill the pool and reduce evaporation, therefore reducing the amount of makeup required.
 - a. He noted that these arguments, if valid, should apply to all accessory structures and not just swimming pools.

- iv. Regarding statement that pools require excessive consumption of water which must be purchased at high rate, the homeowners pay for the water, so they are covering that expense. Suggested that homeowners could be required to truck in water or additional charges for water use for pools to address this concern.
- v. Negative arguments regarding water disposal can be addressed through the CAFRA ordinance requirements.
- vi. Regarding the Master Plan goals and objectives for the Land Use element:
 - a. The ordinance is contrary to the objective to support and encourage recreational uses. He feels pool regulation indicates that there are acceptable ways and not acceptable ways to enjoy the Point.
- vii. All other concerns (lighting, noise, etc.) can be addressed with less intrusive means.
- e. Comm. vanHeeswyk responded to two of Mr. Casey's comments:
 - i. Regarding being able to enjoy the Point, there are ordinances in place which prevent people from doing whatever they want or enjoy all the time. Example provided was that due to noise ordinance, someone who likes loud noise would not be able to do so because it intrudes on other people.
 - ii. Regarding water usage, she noted the concern was not people paying for their water usage, it was the limited supply available not being used appropriately. Water prices will continue to increase as supply decreases due to saltwater intrusion in the aquifer. She referred to her earlier references to the water conservation and open space preservation in the Master Plan.
 - a. Mr. Casey responded that an unintrusive ordinance requiring water to be trucked in should be enacted, not a ban on pools which excessively limits the use of someone's private property.
- f. Ms. Busch noted that during quick review of the Recreation Element, which was referenced by Mr. Casey, it suggests that it applies only to public recreation areas and public recreation areas.
 - i. Mr. Casey responded that the element does largely deal with public areas, however that does not mean its scope is or should be limited only public recreation. In the 2017 Reexamination, the goal referenced does not limit the scope of the goal to public recreation only.
- g. Comm. vanHeeswyk advised that there are several pending applications for the construction of pools. They are of varying sizes and not all are as small as the one being referenced. Permits for pools cannot be issued once the ordinance is adopted and the 20-day stopple period passes.
- h. Mr. Keosky asked for confirmation that this ordinance would not affect the property prompting discussion.
 - i. Mr. Van Embden stated that was why the Board asked for the Commissioners to also address the existing pools and those pending permits.
- i. Comm. vanHeeswyk addressed the idea that the Borough was limiting residents' enjoyment by banning pools but compared it to the ordinances which prevent people from increasing the size of their home or making other desired improvements to their property. She noted there are several limitations within the Point, but it maintains the character of the Point.
 - i. Mr. Casey disagreed stating that the limitations on housing size a standard zoning practice and the two are not equivalent. That if a pool is viewed as an accepted accessory use, then a property owner should have the right and expectation to have a pool, provided they meet all other zoning and other requirements to do so.
 - ii. Mr. Van Embden provided an example of a family with children that enjoy motorcycle riding on their property. It is within the jurisdiction of the governing body to tell them they are not permitted to do so. He told Mr. Casey that he is making a jump from the court precedence indicating that a pool is an accepted accessory use to this making them a permitted use associated with standard attributes of owning a house. He noted that the houses and properties in the Point are intentionally small, in accordance with the Master Plan, and that his position may not be driven by the Master Plan.
 - iii. Mr. Casey asked for an example where motorcycle riding on a property was determined to be an accessory use.

- iv. Mr. Van Embden replied that being an accepted accessory use does not make it mandatory that everyone has the option to do or have something.
- v. Mr. Casey disagreed, indicating there were few properties that met all the zoning requirements to have a pool.
- vi. Mr. Casey and Mr. Van Embden continued to discuss various aspects of the proposed regulation and the need, or not, for it.
- j. Ms. Busch interjected, suggesting that the Board was edging into testimony which should occur at the Commissioners' meeting, not discussion in the scope of Board.
- k. Ms. Kelly agreed with Ms. Busch, indicating that while Mr. Casey's points are helpful it was related more to the essence of the ordinance than its relation to the Master Plan.
- l. Mr. Casey closed the discussion stating that he did not believe the ordinance was consistent with the Master Plan and was an intrusion on private property.
- m. Mr. Greenberg stated that he believes the proposed ordinance is consistent with the Master Plan. He feels the ordinance was drafted because the Commissioners felt that it was consistent with the Master Plan to do so. The legislative body will address all these points and open to the public for discussion at second reading.
 - i. Mayor Moffatt noted that the ordinance was drafted by the Borough Solicitor and presented to the Commissioners. He does not agree on all points in the proposed ordinances but will discuss at the upcoming work session, not at the Planning Board.
- n. Mr. Casey noted that per MLUL, Planning Board recommendation was merely advisory does not preclude Commissioner approval of an ordinance.
- o. Motion was made in the affirmative by Comm. vanHeeswyk and second by Mr. Sowers. All present voted aye except for Mr. Casey who voted nay; Mr. Hood abstained.

Board Information

1. Mr. Greenberg informed the Board members that the Completeness Subcommittee needs one new member. He specifically referenced to Ms. Kelly and Mr. Sowers as new members. Mr. Keosky summarized the tasks and procedures involved and the time commitment involved.
 - a. Mr. Sowers agreed to join.
2. Comm. vanHeeswyk informed the Board that the MPAP had been approved by NJDEP and needs to be approved/accepted by the Planning Board by resolution at next month's meeting. She noted that a link to the document would be provided prior to the meeting for review.
3. Mrs. Worthington advised the Board that per the calendar set up at their request earlier in the year, she had requested copy of the 5 Year Capital Budget Plan for 2021 for the Board's review, but had been told it was not yet available.

Public Comment

1. Public comment was opened at 8:27 pm on a motion by Mr. Keosky and second by Mr. Greenberg
2. Public comment was closed at 8:28 pm on a motion by Mr. Keosky and second by Mr. Yunghans. All present voted aye.

Adjournment

The meeting adjourned at 8:29 pm on the motion by Mr. Keosky. All present voted aye.

Respectfully Submitted by:

Rhiannon Worthington

Board Secretary

Approved by Board 11/24/2020