

BOROUGH OF CAPE MAY POINT

Planning Board

Meeting Minutes

Thursday, February 17, 2022, 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 publication in the Cape May Star and Wave Newspaper and continuous posting of the scheduled meeting dates on the official Municipal Bulletin Board at 215 Lighthouse Avenue, Borough of Cape May Point, New Jersey.

Roll Call

Present: Ms. Kelly, Dr. Pfendner, Mayor Moffatt, Comm. vanHeeswyk, Mrs. Leming, Mr. Wallace, Mr. Remy, Mr. Murphy, Mr. Sowers

Absent: Ms. Bassett, Mr. Hood

Also Present: Rhiannon Worthington, Secretary; Mr. Nathan Van Embden, Esq., Attorney; Mr. Brian Prohowich, PE, CME, CPWM, Board Engineer; Mr. John McGraw, Zoning Official

Minutes

The minutes from the January 20, 2022, meeting were approved as corrected on a motion by Comm. vanHeeswyk and second by Mrs. Leming. All present voted aye except for Mr. Sowers who abstained.

Business

1. Mayor Moffatt and Comm. vanHeeswyk recused themselves from all applications.
2. Mr. McGraw and Mr. Prohowich were sworn for all applications.
3. Hearing for Application PB2021-03: 315 Cape Avenue, Block 13 Lot 1.02 & 21.02
 - a. Applicant & Professional: Mr. Thomas Wagner
 - b. Applicant's Representative: Mr. Anthony Monzo, Esq. of Monzo Catanese Hillegass, P.C., located at 211 Bayberry Drive in Cape May Court House NJ.
 - c. Mr. Wagner stated his qualifications as an architect and was accepted as an expert by Ms. Kelly.
 - d. Mr. Monzo stated the following:
 - i. Existing property is a single-family home with detached garage. Mr. Wagner initially intended to demolish the garage to meet zoning requirements. After starting construction, the homeowner decided to explore the options to keep the garage as there was no good location for relocation of the structure.
 - ii. Variance request for expansion of an existing non-conformity is required because the distance between existing house and garage is less than 10 feet and it is being expanded by addition of second floor.
 - iii. Advising the Board not to address the request based on the status of construction on the property. The structures exist lawfully and the addition itself should be reviewed in regard to the C1 and C2 criteria. It is an expansion of a non-conforming structure which does not exacerbate a non-conforming condition, but as they have been told the variance is necessary, so it is being requested.

- e. Mr. Wagner was sworn and testified the following:
 - i. The proposed addition is within the current footprint, excluding outdoor spaces, and does not decrease the distance between the house and the garage.
 - ii. Bought property 1-1/2 years ago and believes that the garage may be original to the property. States that garage is well built and in good condition. He and his wife intend to retire there but need an additional bathroom and bedroom to do so.
 - iii. The distance from building to building is almost 7 feet. The distance from eave to eave, as is defined by ordinance, is 3 feet. He noted that the second floor is technically further from the garage than the first floor.
 - iv. Reviewed C1 and C2 criteria and purposes of zoning:
 - i. C1 addresses hardship which would be an exceptional situation addressing the specific property which is the existing structures. The modification requested cannot be done without a variance without awkward design modifications.
 - ii. No detriments were identified.
 - iii. Acknowledged that the 10 feet distance is intended for fire separation from a structure that would house a car. The garage cannot be accessed nor is it intended to be used to store a car. When constructed this zoning criteria did not exist.
 - iv. No impact on light, air and open space because the garage does not have a second floor.
 - v. C2 addresses the balancing test. The usefulness of the house when expanded and maintaining the existing distance between the structures does not seem to differ from the distances between surrounding properties.
 - vi. The property does not have a basement, so the garage is particularly useful for storage of items which might otherwise be stored in a basement.
 - vii. Design attempts to keep the house appropriate to the streetscape.
 - viii. Has reviewed the Borough ordinances regarding trees and vegetation. Intention is to landscape the property to support the Borough's plan for nature preservation. No trees are to be removed.
 - v. In regard to the Board Engineer's review:
 - i. Has no preference in regarding to proposed sidewalk and curb – the block currently has curb and sidewalk, although Borough has been deleting it in areas throughout the Borough. Will proceed as Borough requests.
 - ii. Proposed driveway will be kept short and will not extend to the garage. Ground cover around stepping stones and beyond to driveway will be vegetative, such as a pollinator garden with a path, due to available sun.
 - iii. The existing stump can remain or be ground out – will proceed as Borough requests.
- f. Board Questions
 - i. Mr. Remy asked why construction was already underway when request was just received.
 - i. Mr. Wagner responded that he agreed to remove the garage when the zoning permit was issued. Later decided wanted to keep the garage and consulted with Mr. Monzo about the options to do so.
 - ii. Mr. Monzo added that the construction is not complete, and he would expect that a certificate of occupancy would not be issued without a variance or removal of the garage.
 - ii. Mr. Sowers asked about the proposed concrete walk from the house to the street.
 - i. Mr. Wagner responded that there was no intention to install concrete and it was an error on the print. The intention was for a wood walkway.

- iii. Dr. Pfendner asked if proposed off street parking was sufficient for two vehicles.
 - i. Mr. Prohowich specified that ordinance 150 - 18. a. 2 of the Borough code only requires one (1) off-street parking space be provided for a single-family residential dwelling.
 - ii. Mr. McGraw confirmed that one (1) 10x20 parking area was required. He also noted that the material for the parking area is not defined. The area can be grass as long as it has appropriate access from the street.
- iv. Mr. Sowers spoke regarding Mr. Wagner's statement regarding the 10 feet space between structures is to provide a buffer for fires. He clarified that these mandatory distances are not just intended to protect the applicant's house, but the neighboring properties. He suggested that with the garage not meeting setback requirements of the rear and side property line, it may be better to remove the structure. He added that in regard to beautification, open space and a garden may be preferable to the existing garage.
 - i. Mr. Wagner responded that by adding the second floor, the distance between the eaves has been improved. He reiterated how ecologically wasteful it would be to remove the garage and then build another one.
- v. Mrs. Leming agreed with Mr. Sowers comments.
- vi. Mr. Murphy agreed with Mr. Remy's earlier comment, expressing concern about the status of construction without variance approval.
- vii. Mr. Sowers asked for clarification on the status of the structures as lawfully existing now that there has been modification.
 - i. Mr. Van Embden responded that technically he is correct, but he does not believe that the partial completion of the second story changes the narrative of what is being requested and why.
- viii. Mr. Murphy asked who suggested Mr. Wagner come before the Board for a variance.
 - i. Mr. Monzo responded that it was his understanding that he was told the garage had to be removed and after some thought, Mr. Wagner decided to seek legal advice. Mr. Monzo did not believe a variance was necessary but if Mr. Wagner was told one was needed, one could still be requested and the garage kept, if the variance was granted. He stated again that the variance request should be viewed as if there was no construction going on because it does not impact the facts that existed with respect to the variance. If the project would qualify for a variance before construction, then the variance should still be granted despite the ongoing construction.
- ix. Ms. Kelly asked Mr. McGraw for clarification on his completeness review comments regarding the applicant's request for variance relief for continuation of an existing non-conformity, and his determination that what should be requested is variance relief for expansion of an existing non-conformity, due to the house being too close to the garage and by adding the second floor creates additional structure in a mandated minimum distance between structures.
 - i. Mr. McGraw stated that the additional structure is being built within the required 10-foot separation. Based on that it was his determination that a variance required because it was not just a continuation of what existed previously but is a newly created structure in the required separation space.
- x. Mr. Murphy asked when Mr. Wagner was told he needed a variance.
 - i. Mr. McGraw cannot specify when he may have told the applicant a variance was required. He said it would have been after Mr. Wagner applied for a zoning permit. Noted that he always tells applicants that they can come into compliance or request a variance.
 - ii. Ms. Kelly referenced Mr. Remy's earlier similar question and Mr. Wagner's response.

- g. Public Comment – Within 200 feet
 - i. Mr. Jerry Roller of 316 Central Avenue, CMP
 - i. Stated that construction of the addition does not change what already exists.
 - h. Public Comment – General
 - i. None
 - i. Findings of Fact
 - i. Mr. Sowers summarized the application as due to the addition of a second floor; two existing non-conforming structures require a variance. The non-conformity is that the structures are too close, being 2.9 feet between eaves and 6.9 feet between walls, where 10 feet is required. He believes the applicant presented a good argument for the C1/hardship variance and C2/balancing variance in regard to beautification and impact to the community.
 - ii. Mr. Murphy understands the existing conditions and believes the C1 requirements have been met and the C2 is a moot issue. Made a general suggestion to all listening that they should come to the Board before they start construction.
 - iii. Mr. Remy agreed with Mr. Murphy.
 - iv. Dr. Pfindner stated she was still unclear how a permit was obtained before the demolition was completed but acknowledged it as a moot point. Regarding the application, she was in favor of not tearing down the existing structure and creating waste. She also acknowledged the fire concern but feels that the condition has existed this way for 80 plus years with no issue.
 - v. Mrs. Leming understands the concerns expressed by other Board members, and understands the applicant’s timeline, but does not see the benefit of removing the structure to replace it with something smaller.
 - vi. Ms. Kelly agreed with Mrs. Leming.
 - vii. Mr. Wallace agreed with the C1 and C2 request but felt the hardship request was the stronger argument.
 - j. A motion was made in the affirmative to approve the variance as requested as well as a technical variance for the side and rear yard setbacks of the existing garage by Dr. Pfindner and second by Mrs. Leming. Ms. Kelly, Dr. Pfindner, Mr. Murphy, Mrs. Leming, Mr. Remy, and Mr. Wallace voted aye; Mr. Sowers voted nay.
4. Hearing for Application PB2021-04: 309-311 Central Avenue, Block 12 Lot 18.01 & 18.02
- a. Mr. Sowers recused himself as he is a relative of the applicant.
 - b. Applicant: Mr. and Mrs. Polgardy and Mr. and Mrs. Simpson.
 - c. Applicant’s Representative and Professional: Mr. Curtis D. Biehn located at 3916 River Road in Lumberville PA.
 - d. Mr. Biehn and the applicants were sworn.
 - e. Mr. Biehn stated his qualifications as an architect and was accepted as an expert by Ms. Kelly.
 - f. Mr. Biehn testified the following:
 - i. The duplex structure was built in 1935. Ms. Polgardy purchased in 1998; Family of the Simpsons has owned the property since 1955, with Mr. and Mrs. Simpson taking possession in 2020. Per the 1990 census, there were nine duplex residences within the Borough, showing they is a precedence. The existing structures are 600 feet each.
 - ii. A two-story expansion on the rear of the property is proposed to add two bedrooms and one bathroom on each property. The expansion has a footprint of 250 square feet footprint, adding 500 square feet on each property.
 - iii. Per Mr. McGraw’s refusal of permit notice, variances under the C1/hardship are requested as follows:
 - i. Side yard setback due to the common wall of the duplex structure being on the property line, creating a 0 feet setback where 5 feet is required.
 - ii. Total of side yards as 13 feet is proposed where 15 feet is required.

- iii. Required first floor elevation of the addition as 12.4 feet is proposed where 12.7 feet is required.
 - iv. Presentation displayed how a by-right addition on each property would look and how impractical it would be. Stated they have made all efforts to keep the look of the house including its look as a single house and not have it look like an addition or fragmented duplex.
 - v. Noted that they are raising the addition to be more compliant with base flood elevation.
 - vi. The applicants thanked the Board members for considering their request.
 - vii. Pending contract with Hawthorne Davis to build addition.
 - g. Board Questions
 - i. Mr. Remy stated he supports the application.
 - ii. Mr. Murphy asked how they managed to agree on what to build.
 - h. Public Comment – Within 200 feet
 - i. Mr. Jerry Roller of 316 Central Avenue, CMP
 - i. Has no objection to the application as the community benefits from the well thought out plan to expand the structure in a way that will better accommodate its residents.
 - i. Public Comment – General
 - i. Mr. Jeff Sowers of
 - i. Appreciates the effort to upgrade the structure and not demolish.
 - j. Findings of Fact
 - i. Dr. Pfindner summarized the application as a duplex property with a shared wall. They are requesting a bulk C1 variances. Stated she was impressed with the proposed plan to make the property more livable but also maintain the character of Cape May Point. She also stated that the positive criteria was met by plans adding to the view of the house and did not hear there was negative criteria.
 - ii. Mr. Murphy agreed with Dr. Pfindner and felt that the hardship requirement was met.
 - iii. Mrs. Leming, Mr. Wallace and Mr. Remy agreed with Dr. Pfindner and Mr. Murphy.
 - iv. Ms. Kelly agreed with Dr. Pfindner and thanked the applicants for very effective presentation.
 - k. Mr. Van Embden verified agreement by the applicant with conditions in the Van Note Harvey review letter dated January 18, 2022.
 - l. A motion was made in the affirmative to approve the three (3) variances requested and compliance with the engineer’s review letter by Mr. Remy and second by Mr. Murphy. Ms. Kelly, Dr. Pfindner, Mr. Murphy, Mrs. Leming, Mr. Remy and Mr. Wallace voted aye.
- 5. Hearing for Application PB2022-01: 303 Brainard Avenue & 517 Pearl Avenue, Block 11 Lot 1 & 2
 - a. Mrs. Leming recused herself due to proximity.
 - b. Applicant: Cape Manor Properties LLC
 - c. Applicant’s Representative: Mr. Steven Bagge of K2 Consulting Engineers located at 36 Tanner Street in Haddonfield NJ.
 - d. Mr. Van Embden stated that a letter was submitted by K2 Consulting Engineers on February 4, 2022, requesting a time extension to file the subdivision plan.
 - e. Mr. Bagge was sworn and testified the following:
 - i. Hearing for application PB2020-06 occurred on May 19, 2021, to reestablish lot lines and acknowledge existing conditions at 517 Pearl Avenue. Approval was granted with the condition of demolition at 303 Brainard Avenue. Per MLUL a minor subdivision plan must be filed within 190 days of approval, which would have been December 23, 2021, as the resolution was issued June 16, 2021.
 - ii. The dates of the process were reviewed: utility disconnects were applied for in June 2021, demolition permit was applied for September 2, 2021, and the permit issued October 20, 2021. Demolition of the structure at 303 Brainard Avenue occurred on November 15, 2021

and then K2 returned to the site to complete updated survey and subdivision plan. The proposed subdivision and variance plans were submitted for review 3 days before the deadline. Comments from the engineer were received mid-January but the deadline for filing had expired so an extension is necessary. The review letter included some comments which required addressing, but nothing that affects the substance of the application.

iii. The applicant requested a 90-day extension.

f. Board Questions

i. Dr. Pfendner asked if they were aware why it took six weeks for the demolition permit to be issued.

i. Mr. Bagge replied that he could not confirm other than all construction departments are experiencing delays at this time.

ii. Mrs. Worthington noted that state law allows 20 business days for issuance of a construction permit, which is four weeks.

g. No public comment is necessary for administrative application.

h. Findings of Fact

i. Mr. Sowers summarized that the application as they ran out of time.

ii. Ms. Kelly agreed that the letter was very clear that they made all efforts to meet the deadline.

i. A motion was made in the affirmative to approve a 90-day extension by Mr. Murphy and second by Mr. Sowers. Ms. Kelly, Dr. Pfendner, Mr. Murphy, Mr. Sowers, Mr. Remy and Mr. Wallace voted aye.

6. Discussion regarding Ms. Kelly request for Cox treatise subscription.

a. Ms. Kelly explained that she preferred to have access to the E-book online instead of a hard copy, so she is updated regarding changes in statutes or case law.

b. Comm. vanHeeswyk stated that she had been informed of conversation Ms. Kelly had with Mr. Grant the day prior, where he stated he had been incorrect in sending this to the Board regarding her request since access is already provided. She noted that the hard copy can be used by any Board member similar to a library, and if someone required it for personal use, the person has generally purchased it themselves.

c. Mrs. Worthington explained that historically the Borough has maintained a hard copy of the book at the office for use by Board members. Recently a digital version was provided with the hard copy of the book. Access to Mrs. Worthington's subscription was provided to Ms. Kelly. In order to maintain a copy of the book for general use, it has been determined a hard copy is preferable to an E-book, where sharing with multiple members would violate single user agreement.

7. Subcommittee Updates

a. Ms. Kelly confirmed that the following subcommittees exist:

i. Completeness Review – Ms. Kelly, Mr. Sowers and Mr. Murphy

ii. Board Engineer Review – Mr. Sowers and Mr. Murphy

iii. Ordinance Review (pending) – Mrs. Leming and Mr. Remy

b. Mrs. Worthington asked Mr. Sowers and Mr. Murphy if there were any updates regarding the Board Engineer Review.

i. They responded that they hadn't received the proposal information discussed at the January meeting. Mrs. Worthington and Ms. Kelly would ensure the information was provided as soon as possible.

Board Information

1. Mr. Sowers stated that his inquiry with Mr. McGraw regarding lot coverage clarifications was still outstanding. Mrs. Worthington stated she would contact Mr. McGraw to set up in-person meeting.

2. Mr. Sowers suggested that there should be a document signed by the applicant when permits are approved or denied that the applicant understands they are always entitled to apply for a variance to clarify the process and prevent situations like the application for 315 Cape Avenue. Comm. vanHeeswyk stated she thought

the applicant was clear about what was required for the permit to be issued but created confusion among some of the Board members by changing his mind after the start of construction. Mr. Van Embden commented that this administrative function would be in the scope of the Zoning Department and not the Board.

Public Comment

1. Public comment was opened at 9:08 pm.
2. None.
3. Public comment was closed at 9:09 pm.

Adjournment

The meeting adjourned at 9:09 pm on the motion by Mr. Sowers and second by Ms. Kelly. All present voted aye.

Respectfully Submitted by:

Rhiannon Worthington

Board Secretary

Approved by Board 4/20/2022