

BOROUGH OF CAPE MAY POINT

Planning Board

Meeting Minutes

Wednesday, April 17, 2019 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: Mr. Greenberg, Mr. Keosky, Comm. vanHeeswyk, Mr. Fraatz, Mr. Casey, Mr. Hood, Mrs. Busch, Mr. Yunghans, Mr. Murphy

Absent: Mrs. Gibson, Mrs. Leming

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

Minutes

Review of the minutes from the March 20, 2019 meeting was postponed until the next scheduled meeting.

Business

1. Oath of Office was completed by each Board member.
2. Special Resolution SR PB2019-01: Appointment of Chairperson and Vice Chairperson
 - a. Vice Chairperson
 - i. Mr. Fraatz nominated Mr. Keosky for Vice Chairperson; Mr. Greenberg second. Nominations were closed.
 - ii. Motion was made by Mr. Fraatz and Mr. Greenberg second. All present voted aye except for Mr. Keosky who abstained.
 - b. Chairperson
 - i. Mr. Keosky nominated Mr. Greenberg for Chairperson; Mr. Yunghans second. Nominations were closed.
 - ii. Motion was made by Mr. Keosky and Mr. Yunghans second. All present voted aye except for Mr. Greenberg who abstained.
3. Special Resolution SR PB2019-02: Schedule of Planning Board Meetings 2019-2020 and Designation of Official Newspaper
 - a. Motion made by Comm. vanHeeswyk and Mr. Keosky second. All present voted aye.
4. Special Resolution SR PB2019-03: Appointment of Board Professionals
 - a. Motion made to nominate as written by Mr. Greenberg and Mr. Fraatz second. All present voted aye.
5. Hearing for Application PB2019-02: 413 Princeton Avenue, Block 26, Lot 18
 - a. Applicant: Mr. John Toates of 415 South Waterloo Road in Devon PA.

- b. Mr. Van Embden stated that the Board has been designated, by ordinance not statute, as the review board for elevation variance. Because this is a separate function the application will be heard in two parts, with the Chapter 90 variance being considered first.
 - c. Mr. Toates was sworn and testified the following:
 - i. Presented a highlighted copy of print A1.0 and existing property pictures, labeled as Exhibit A-1. Front yard setback is an existing non-conformity. Provided a certification dated 5/16/19 from Kachele Group, documentation from his firm regarding proposed waterproofing, and copy of ASE-24 labeled as Exhibit A-2.
 - ii. Residence purchased by Mr. Toates and his wife approximately one year ago. Home is a 3-bedroom, 1 bath cottage style structure. Property meets all variance requirements.
 - iii. Requested variances for:
 - i. Retain the existing basement.
 - ii. Requests variance for dry flood proofing instead of flood vents.
 - iii. Add porches in the flood plain due to existing home elevation.
 - iv. Does not feel there is a negative effect to the neighborhood or the home by maintaining the existing non-conformities.
 - v. Does not believe his property affects the flood insurance for the community as it is not insured and the basement is existing.
 - vi. Stated the elevation of the existing home, which is at 10'-0", is a hardship. The proposed deck would be at height 6" below the first-floor elevation and would fall a total of 3" across the deck, all standard means of deck construction, which would be higher if the first-floor elevation was higher.
 - i. Mr. Van Embden asked if it was possible to construct the porch at the first-floor elevation.
 - 1. Mr. Toates indicated it created a potential for water penetration.
 - vii. Explained that the existing home has a full basement for mechanicals and crawlspace in the surrounding additions. States filling in the basement and relocating the mechanicals is a hardship.
 - viii. Explained flood proofing process and its specific use on historic homes as means of preservation. Basement would be accessible by existing interior access only. External windows and the exterior access door would be covered by a proposed porch, leaving only one window that would have to be blocked and waterproofed.
 - ix. Confirmed he does not currently have flood insurance due to the existing structure (basement) being below base flood elevation. He does not feel this affects the community as his structure would not receive funding in the event of a significant flood event as he is uninsured. He says he made the choice not to insure based on the cost, but he could not say that a future homeowner would do the same.
 - x. Summarized that he feels the financial hardships warrant the variances; feels he is making the best effort to meet the intent of zoning while maintaining a smaller cottage structure.
6. Board Questions & Comments:
- a. Mr. Fraatz asked how the applicant intends to address water rising from beneath the structure into the basement area.
 - i. Mr. Toates explained that there is a defined water line from many years of minor water intrusion. The plan is to raise the floor to above the existing line to have the floor be higher than the average water increase. Sump pumps exist in the basement.
 - b. Mr. Casey, Mr. Van Embden and Comm. vanHeeswyk asked questions about the ability for the structure to be insured for flood insurance. Mr. Toates testified that he chooses not to have flood insurance due to the rate for insuring this property. Mr. Casey pointed out that would not prevent a future homeowner from applying for insurance and affecting the rates within the community.
 - c. Comm. vanHeeswyk inquired about different address listed in the application.

- i. Mr. Toates advised that the address in the application is his business address, the address provided at the beginning of his testimony is his home address.
- d. Mr. Van Embden asked if Mr. Toates had reviewed the section 90 requirements provided by the engineer.
 - i. He responded he had an felt the application meets all criteria for approval.
- e. Mr. Hood asked for clarification regarding Mr. Graham’s review note regarding the dry flood proofing not being applicable here.
 - i. Mr. Toates responded that Cape May Point ordinance only permits it’s use in industrial applications, however, ASE-24 suggests approval for use in specific residential applications, for means of preservation.
- f. Mr. Yunghans asked about the location of the screened in porch and materials for construction.
 - i. It was confirmed that the porch was proposed on the southwest side of the structure.
 - ii. Mr. Toates detailed the materials and construction methods to be used and confirmed they were designed to resist floatation and uplift.
- g. Mr. Van Embden asked if there was any circumstance where the basement floor could uplift.
 - i. Mr. Toates stated there was not per his calculations.
- h. Mr. Fraatz asked how floodproofing is attached to the structure.
 - i. Mr. Toates stated that it was part of the construction.
 - ii. Mr. Fraatz asked about the durability of the materials used for floodproofing.
 - iii. Mr. Toates confirmed that the materials were as durable as standard roofing or siding materials and that the flashing is protected by the siding.
- i. Mrs. Busch stated on behalf of the Environmental Commission:
 - i. Concerns about hazard to neighbors.
 - ii. Concerns about effect on Community Rating System (CRS).
- j. Mrs. Busch asked about porch construction.
 - i. Mr. Toates confirmed they were secured to the structure and would not “tear away” in the event of a flood event.
- k. Mrs. Busch asked about the consideration of financial hardships.
 - i. Mr. Van Embden clarified that for a variance from Chapter 90 it is non-specific, simply stating a denial should not create a hardship for the applicant.
- l. Mr. Keosky asked about the permitted, existing and proposed floor area ratio (FAR).
 - i. Mr. Toates confirmed that the permitted FAR was 0.42, the existing FAR is 0.20 and the proposed FAR is 0.24. He noted that the project confirms with all other zoning requirements.
- m. Mr. Keosky asked why he could not fill in the basement and relocate the mechanicals to a room at first floor elevation.
 - i. Mr. Toates indicated that there are several accessory structures on his property, and he would exceed lot coverage if he added a room for the mechanicals.
 - ii. Mr. McGraw confirmed that the permitted lot coverage is 0.30, the existing is 0.208 and the proposed with the porches, without a mechanical room, is 0.295.
- n. Mr. Fraatz asked about proposed condensing unit locations.
 - i. Mr. Toates confirmed condensing units would be on platform above base flood elevation.
- o. Mrs. Busch noted that the town is promoting the addition of porches, as the applicant is attempting to do. Mr. McGraw reminded the Board that once the variance is granted, the porches could be enclosed and turned into interior living space.
 - i. Mr. Toates proposed a condition be added to the variance approval indicating that the porches may not be enclosed.
 - ii. Mr. Van Embden asked the applicant if he would be willing to enlist a deed restriction regarding the porches, which would be included in the variance as a condition of approval. Mr. Toates indicated he would be open to a deed restriction provided it will not prevent a future owner from demolishing the structure completely and starting fresh. Mr. Van Emden

agreed and noted that this would only apply if the porches remained below the base flood elevation standards.

7. Mr. Louis Belasco, Flood Plain Administrator and CRS Coordinator, of 220 East 9th Avenue in North Wildwood, NJ, testified the following:
- a. The hardship should not be financial but related to the property and the land specifically.
 - b. The Borough voluntarily participate in the CRS to receive discounts towards flood insurance rates.
 - c. The Board can grant variances as they see appropriate, however, if FEMA feels the variances contradict the higher standards agreed to as part CRS participation, it could affect the community rating.
 - d. The step by step review process for CRS participation was explained by Mr. Belasco, stating there is a class rating that operates in 5% increments.
 - i. There was discussion among Board members, Mr. Toates and Mr. Belasco regarding higher standards, potential impact on discount by deviance from those standards, anticipated premium increase for flood insurance. It was noted that presently the annual premium for flood insurance o a home with a basement in the Borough of Cape May Point was \$62,500.
 - e. Noted that the suggested floodproofing cannot be submitted to FEMA unless the property is on the national historical registry.
 - i. Mr. Toates confirmed that the house was old; however, it was not designated as historical in any capacity he was aware of.
 - f. Mr. Toates inquired about approvals of other variances from Section 90 for not meeting base flood elevation.
 - i. Mr. Van Emden confirmed that one application had been granted but there is no precedence set. He reviewed the details of the referenced application for the Board.
 - g. Stated that FEMA requires that when a substantial improvement is completed to a structure (improvement costing 50% or more of the home value), the structure must be brought into compliance with all flood standards.
 - i. Mr. Toates confirmed that the projected value of this structure was somewhere around \$62,000.
 - ii. Mr. Keosky asked if the applicant had considered raising the home.
 - i. Mr. Toates replied that he did not feel the property lended itself to that.
 - ii. Mr. Fraatz requested clarification if that was a preference or if there was a technical reason.
 1. Mr. Toates responded that it was his preference based on his professional knowledge and experience.
 - iii. Mrs. Busch inquired further about hardship.
 - iv. Mr. Van Emden stated that the zoning ordinance may be contradictory to FEMA. Mr. Greenberg said that the ordinance permits the variance but that doesn't negate the effects it will have on CRS participation.
 - v. Mr. Toates stated that he does not want to request a variance for lot coverage to add a first-floor level mechanical room and fill in basement due to added expense to relocate the mechanicals.
 - h. Mr. Hood asked what happens if the bare minimum requirements for CRS standards are not met.
 - i. Mr. Belasco responded that a negative rated property does not meet the bare minimum rating, and subsequently could result in the Borough's removal from the Flood Insurance Program. With the existing basement, this property would be considered negatively rated.
 - ii. Mr. Keosky asked if only the porches were approved if it would be less impactful result.
 - iii. Mr. Belasco confirmed that the impact would be less, as a negatively rated property would be worse.
 - i. Mr. Van Embden asked if deed restriction would reduce negative impact of variance approval.

- i. Mr. Belasco indicated he was unsure however the deed would have to be filed with the County therefore it would be able to be submitted for consideration.
8. Mr. John McGraw, Zoning Official, of 508 Forest Road in Villas, NJ, testified the following:
 - a. Confirmed that basements have been filled in the Borough previously and was not a hardship when property was being substantially improved.
 - b. Clarified that the structure was not historic, it was just old. MLUL and Chapter 90 are designed to bring older structures into compliance over time.
 - c. Reminded the board that a variance from chapter 150 was required for the porches being constructed below flood elevation.
 - i. Mr. Van Embden noted that it would be voted on separately.
 - d. No consideration for historic properties in the Borough zoning or flood ordinances.
 - i. Mr. Van Embden clarified that historic properties are protected, but as the Borough has no Historic Preservation Commission, those protections do not apply here.
 - e. Advised the Board that a deed restriction is false sense of comfort as it will be lost over time, same with the resolution condition.
 - i. Mr. Van Embden agreed it was not ideal but there was no better option.
9. Public Comment
 - a. Public portion opened at 8:55 pm on a motion by Comm. vanHeeswyk and second by Mrs. Busch.
 - i. Nancy Bretherick – 304 Ocean Avenue CMP
 - i. Supports the application.
 - ii. Supports the preservation of older homes in the community.
 - ii. Kathy Hogarty – 401 Oxford Avenue CMP
 - i. Does not support the application.
 - ii. Thinks the community will not be happy to see rates increase because of a few properties in the Borough. Does not think the Board should approve variances that can have that effect on CRS.
 - iii. Joe Glazer – 317 Ocean Avenue CMP
 - i. Was here for historic preservation discussion, however, is property owner caddy corner to the Toates property and asked the Board to consider the financial viability of the property.
 - ii. He spoke to the need to define historic preservation in the Borough.
 1. Mr. Greenberg stated that he agreed about the counteracting forces and the need for historic preservation to be focused on.
 - b. Public portion closed at 9:13 pm on a motion by Mr. Murphy and second by Mrs. Busch.
10. Mr. Van Embden summarized the Board’s responsibilities regarding approval of these variances:
 - a. Reviewed Chapter 90 criteria
 - b. Reviewed Chapter 150 criteria
 - c. Approval of waterproofing
 - d. The effect on the community’s flood insurance
 - e. Effect on the community’s character
11. Mr. Van Embden asked for a motion in the affirmative to approve the application for variance from Chapter 90 for basement flood proofing.
 - a. Motion was made by Comm. vanHeeswyk and second by Mr. Greenberg. The application was denied, as all present voted nay, except for Mr. Hood who voted aye. Several board members expressed concern for community flood insurance rates.
12. Mr. Van Embden asked for a motion in the affirmative to approve the application for variance from Chapter 90 for porch elevation with the condition of a deed restriction.
 - a. Motion was made by Mrs. Busch and second by Mr. Casey. The application was approved, as all present voted aye. All board members stated desire to encourage construction of porches.

13. Mr. Van Embden asked for a motion in the affirmative to approve the application for variance from Chapter 150 for the porches with condition of deed restriction.
 - a. Motion was made by Mrs. Busch and second by Mr. Casey. The application was approved, as all present voted yay except for Comm. vanHeeswyk who abstained. Mr. Casey noted that his vote was based on the hardship consideration and requirements, which he felt the application met.
14. Mr. Van Embden asked for a motion in the affirmative to approve the application for variance from Chapter 150 for maintaining existing basement below base flood elevation.
 - a. Motion was made by Mrs. Busch and second by Mr. Casey. The application was denied, as all present voted nay except for Mr. Hood who voted aye and Comm. vanHeeswyk who abstained.
15. Resolution for Application PB2019-01 – 601 East Lake Drive, Block 33, Lot 3
 - a. The resolution was approved on a motion by Mrs. Busch and second by Mr. Keosky. Mrs. Busch, Mr. Fraatz, Mr. Hood, Mr. Casey and Mr. Keosky voted aye.
16. FEMA 50% Discussion.
 - a. Mr. Belasco stated that an appraisal can be used to determine house value, however it must meet certain requirements dictated by FEMA.
 - b. The code says that the appraised or assessed value may be used, however, if the appraised value is higher than the assessed value, the homeowner will likely see an increase in assessed value and tax expense.
 - c. Mr. Greenberg asked Mr. Belasco to forward the process and requirements for review by the Board members and Historic Preservation Subcommittee.
17. Historic Preservation Subcommittee Update.
 - a. Mr. Yunghans provided a written update with the actions taken by the subcommittee since the March meeting.
 - i. The subcommittee met with NJDEP representatives for a meeting and tour of Cape May Point.
 - ii. NJDEP has provided state documentation for review by the subcommittee. The subcommittee will also review previous studies that exist for Cape May Point and meet with members of Historic Preservation Commissions in towns and borough's like the Point.
 - b. Public Comment
 - i. Joe Glazer
 - i. Anxious to hear more about the historic preservation process.
 - ii. Has experience with Cape May HPC and believes restrictions can decrease property value and desirability if not implemented appropriately.
 - iii. Comm. vanHeeswyk responded that the Point is known for its diversity of architecture and feels that the growing lack of diversity within the Borough is what is upsetting many residents.

Public Comment

Public comment opened and closed during various board agenda items.

Board Information

None

Adjournment

The meeting adjourned at 9:30 pm on the motion by Comm. vanHeeswyk. All present voted aye.

Respectfully Submitted by:

Rhiannon Worthington

Board Secretary

Approved by Board 7/25/2019

17 April, 2017
Planning and Zoning Board Meeting
Historical Preservation Sub Committee Report

On Tuesday, April 9th 2019 the Historical Preservation Sub-Committee (Mr. Hood, Mr. Greenberg and Mr. Yunghans as chair) met with Jonathon Kinney and Erin Fredrickson from the New Jersey Department of Environmental Protection. Jonathon and Erin both focus on historic preservation as their primary role within the New Jersey Department of Environmental Protection. This three-hour meeting ended in a tour of Cape May Point for Jonathon and Erin, in order to familiarize them with our present state.

The purpose of this meeting was to understand the following:

- What does Historical Preservation mean in the State of New Jersey?
- What state and local law (s) are applicable?
- What can individual Boroughs, such as Cape May Point, legally do in creating an Historical Preservation Committee?

Each of these topics were addressed in detail by Jonathan and supported with paperwork histories for each of us to review. Going forward, this sub-committee will:

- Review all of the documentation provided by the state
- Re-read previous studies that exist for Cape May Point
- Talk to Historical Preservation people in other like New Jersey towns and Borough's
- Report monthly on these actions at scheduled meetings.

Submitted April 17, 2019

Dave Yunghans
Chair Historical Preservation Sub Committee of the Planning / Zoning board