

BOROUGH OF CAPE MAY POINT

Planning Board

Meeting Minutes

Wednesday, November 17, 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 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: Dr. Pfendner, Mayor Moffatt, Comm. vanHeeswyk, Ms. Bassett, Mr. Sowers, Mrs. Leming, Mr. Wallace

Absent: Ms. Kelly, Mr. Hood, Mr. Murphy, Mr. Remy

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

Minutes

1. The minutes, outline version, from the September 15, 2021 meeting were approved on a motion by Mr. Sowers and second by Mrs. Leming. All present voted aye except for Mr. Wallace who abstained.
2. The minutes from the October 20, 2021 meeting were approved as corrected on a motion by Ms. Bassett and second by Mrs. Leming. All present voted aye except for Mayor Moffatt who abstained.

Business

1. A minute of silence was observed to remember Malcolm Fraser and Bob Grubb who passed away the prior weekend.
2. Discussion regarding format of meeting minutes.
 - a. Prior to the meeting, Mrs. Worthington distributed two versions of the September minutes, outline and narrative, for review by the Board members. The Board members discussed both versions.
 - b. Mrs. Worthington clarified that the Chairperson does not sign the approved minutes.
 - c. Dr. Pfendner and Mr. VanEmbden stated that the section identifiers (1, a, i, etc.) should be more consistent.
 - d. Per member responses, the majority indicated the outline version was preferred.
3. Discussion regarding review of previous Board files.
 - a. Dr. Pfendner summarized the request made at the prior meeting, how it came to be and the overall intent.
 - b. Mrs. Worthington stated that she was on hold providing any information specific to this discussion pending formal direction from Mr. Van Embden and Ms. Kelly, who have been corresponding directly.
 - c. Mr. VanEmbden stated that the inquiry is valid but is trying to distinguish between the stated goal and request for the file, as all the necessary information would be contained in the resolution.
 - i. Dr. Pfendner stated she wanted to understand the thought process of the members, but Mr. VanEmbden stated that should be contained within the resolution.
 - ii. Dr. Pfendner asked why it was not appropriate to review the entire record and the minutes to get further understanding. Mr. VanEmbden stated the recorded statement from the prior meeting regarding the purpose of the review seeks to review files to determine violation or inconsistency. Dr. Pfendner stated that the properties of concern were clearly not correct. Mr. VanEmbden

- stated that he wasn't sure it was appropriate, particularly as a Chair or Vice Chair of a quasi-judicial Board with a specific task and orientation, to approach the topic with a pre-determined position and attempt to address questions for the public.
- iii. Dr. Pfindner stated that as a resident she sees the outcomes of the decisions and it is a benefit to understand how these decisions were made.
 - iv. Comm. vanHeeswyk stated that she believes the vote should stand on its own and the members involved should not have their votes questioned by the requirement of additional information.
 - v. Ms. Bassett asked if it would be adequate to review the resolution against the finished product and determine compliance. Dr. Pfindner stated that the resolution does not include prints or supporting documents. Mr. VanEmbden stated that the prints and associated supporting documents are usually referenced in the resolution and therefore would be available as part of the resolution.
 - vi. Mrs. Leaming asked who was responsible to verify the variance is being complied with. Mr. VanEmbden stated that would be responsibility of the Zoning Officer. Mr. Sowers advised that he believes the inspection is completed when the project is being reviewed for Certificate of Occupancy.
 - i. Mrs. Worthington advised the Board that per her conversation with Mr. McGraw, the variance is reviewed when the project is submitted for zoning permit and again when construction is complete and a Certificate of Zoning Compliance is requested.
 - vii. Dr. Pfindner stated her concern is that things are changing rapidly and feels what is occurring is "not good". It is her opinion that it is incumbent upon the Board members to figure out how it happened, why it happened and what should be allowed in the future. Comm. vanHeeswyk provided additional information on some of Dr. Pfindner's more specific examples, but Dr. Pfindner stated there are many more that are exceeding FAR and compliance in every way and she wants to know why it occurred.
 - viii. Mrs. Worthington reminded the Board members that the annual report exists for the members' review of what has occurred through the year so they may identify areas of concern. Historically the report was not completed, but exists for 2019, 2020 and drafted for 2021. She offered to create a summary report back to the start of her employment in 2012 so the approvals issued during that time could be viewed at a glance. Comm. vanHeeswyk indicated she required that information for the past five years for a project she was working on as well and requested a copy.
 - ix. Mrs. Leaming expressed concern about questioning the decisions of previous Board members and did not feel historical data was needed. Comm. vanHeeswyk believed it was subjective to look back on the decisions that were made based on the information available at that time and to question what the Board that made that decision thought was right.
 - x. Ms. Bassett asked for confirmation that all applications should be judged independently, without creating precedence. Mr. VanEmbden responded that it would be difficult to deny one application that is similar to a previously approved application, however, each request is based on a specific property, specific configuration and specific circumstances and that is why outcomes for similar applications can be different and justified. The resolution should layout the reasons for the action taken, which would identify the differences for someone claiming a similar situation. He summarized it as a reasonable concern that someone would have the expectation of approval based on previous approvals, but it's not automatic. Dr. Pfindner said that the land use training stated that if three or more variances were issued it created an opening for legal action for a homeowner who was denied similar relief.
 - xi. Dr. Pfindner stated it was her belief that the approvals in question could have only occurred by malfeasance. She stated again it is incumbent of the Board to review and research what was done previously to understand how to avoid it in the future. Dr. Pfindner stated that in addition to Board and Superior Court decisions that allow these variations, some are the result of ineffective review by the Zoning Official when the zoning permit is requested.
- d. Mrs. Worthington advised that her conversation with Ms. Kelly indicated that a process was needed if this was to proceed. She suggested that the Board determine what the end goal of the review was, how

the review would occur, for example subcommittee or independent parties, how it would be reported back to the Board and the expectation of action from the Board regarding the reported information. She stated that her recommendation was a subcommittee to prevent bias.

- i. Dr. Pfendner stated that she believes Board members should have access to all records, inclusive of transcript or recording, of any hearing without formal request. She stated she has been told they could not have these documents without filing requests even though they are on the Planning Board and that they could not act as cops. She spoke at length regarding her disapproval of the way Ms. Kelly has been treated regarding this request, particularly by the management of the Board, who she believes would be found liable if Ms. Kelly pursued action.
 - ii. Mr. VanEmbden responded that the idea of getting a further understanding of previous decisions from what record there may be is limiting. The Board acts based on the information before it at that time and the resolution established the authority granted, including rationale, reasoning and basis for approval or disapproval. He stated he was unclear how more could be discerned from the application or recording.
 - iii. Mr. VanEmbden stated he was offended by the references to “you guys” in Dr. Pfendner’s comments and believes he provided his legal opinion, very straight forward, as requested. Comm. vanHeeswyk feels that the legal advice provided should be heeded. Comment was requested from other Board members by Dr. Pfendner, but no further comment was provided.
- e. Dr. Pfendner asked how to set up a mechanism so Board members have access to the resolution and documents if they choose. Mr. VanEmbden asked if a subcommittee would be established and if so, what the purpose of the subcommittee is.
- i. Dr. Pfendner stated she would ask Ms. Kelly to appoint members to a subcommittee.
 - ii. Dr. Pfendner stated the purpose of the subcommittee would be to review past zoning decisions in order to inform the Planning Board as to what is happening within Cape May Point and how to deal with it in the future. Mr. Sowers suggested the purpose was to determine if zoning board decision of the past are truly in alignment with the Master Plan. Several members agreed with this, including Dr. Pfendner, who stated that’s what she’s been saying. It was suggested that perhaps that was not how her request was being heard.
 - iii. Comm. vanHeeswyk stated that the annual report of the Zoning Board is intended to provide a list of variances issued so the Governing Body to determine if ordinance changes may be appropriate. Dr. Pfendner indicated that the annual report was vague and not adequate for this purpose. Mr. Sowers stated that he believes the concern is not so much quantity of variances as it is the extent of the variance, which is not evident from the report.
 - iv. Dr. Pfendner agreed with Mr. Sowers, indicating adjusting the Master Plan or rethinking how the variances are approached as a combined board may be appropriate. Mr. VanEmbden summarized that she feels the Board not only needs to consider each application but needs to be more aware of its relation and effect on the Master Plan and community, as is specified in land use law. Dr. Pfendner agreed that the Board needs to be more cognizant of the effects of these decision on the community as whole, stating that part of the reason she left the Zoning Board previously was because of her frustration with the members not doing due diligence, such as site visits, and being kind with their decisions. She stated that functioning in a vacuum is inappropriate and ridiculous to anyone with a brain, and even if neighbors do not come to the hearing to voice concern about applications, it is the responsibility of the Board to be aware of what is happening and what could happen.
- f. Mr. VanEmbden confirmed that Dr. Pfendner will recommend to Ms. Kelly to nominate a subcommittee to look at past practices and report back to the Board, no independent action. Dr. Pfendner agreed. Mr. VanEmbden stated that he has had some difficulty with the action available based on information obtained by the subcommittee from looking at past practices, but believes that if done carefully, it can inform the Board and redouble its efforts to adhere to the Master Plan and may limit overbuilding which contradicts its goal.
- g. Mr. VanEmbden will draft a resolution for the next meeting to establish the subcommittee, documenting the purpose and goal, as well as actions of the subcommittee in reporting to the Board. Dr. Pfendner will

ask Ms. Kelly to nominate three members for the subcommittee for the next meeting, at which time action will be taken on the resolution forming the subcommittee.

4. Mr. Sowers followed up on the topic of vegetative coverage, which he brought up at the last meeting. Mrs. Worthington spoke with Mr. McGraw and provided a summary of the information requested by Mr. Sowers. He advised the Board he would like to create a chart of the information for use by the Board. He will submit it to Mrs. Worthington and Mr. McGraw for review before anything is provided to the Board. Mr. Sowers hopes this chart will clarify building coverage and vegetative coverage for the Board and expects it to be a living document.

Board Information

1. Mrs. Worthington thanked the Board members for their patience during the October meeting. Upon reviewing the recording she was aware of the feedback that was occurring.
2. Mrs. Worthington advised the Board that during a recent training, she received some documents which summarized some of the responsibilities, actions and processes of the Boards in a very clear way. She hopes to review them in the near future and provide any relevant information to the members for their use. Mr. Sowers suggested a possible website where these documents could be accessible to Board members; many members agreed. Mrs. Worthington indicated she could look into it.
3. Mrs. Worthington advised the Board members that she had a conflict for the next scheduled meeting on December 14th. She asked the members if there was a preference for either of the proposed new dates: Thursday, December 16th or Monday, December 20th. Mrs. Leming preferred the 16th, Mr. Sowers was not available on the 20th, Dr. Pfendner did not have a preference, and Ms. Bassett was not available on the 16th. Mr. Van Embden confirmed he was available either day. Mrs. Worthington thanked all for their input, advised she would follow up with Ms. Kelly and notify all members of the change no later than December 8th.

Public Comment

1. Public comment was opened at 8:07 pm on a motion by Comm. vanHeeswyk and second by Mr. Sowers.
2. No comment was made.
3. Public comment was closed at 8:07 pm on a motion by Mr. Sowers and second by Mrs. Leming.

Adjournment

The meeting adjourned at 8:08 pm on the motion by Mrs. Leming and second by Ms. Bassett. All present voted aye.

Respectfully Submitted by:

Rhiannon Worthington

Board Secretary

Approved by Board 12/16/2021