

**BOROUGH OF CAPE MAY POINT**  
**Planning Board**  
**Meeting Minutes**  
**Thursday, October 18, 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. Pfindner, Mayor Moffatt, Commissioner vanHeeswyk, Mrs. Leming, Mr. Wallace, Mr. Remy, Mr. Murphy, Mr. Brown, Ms. Bassett

Absent: None

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

**Minutes**

The minutes from the August 16, 2022, meeting were approved as amended on a motion by Commissioner vanHeeswyk and second by Mr. Murphy.

**Business**

1. Oath of office was verbally administered to Mr. Brown.

2. Hearing for Application PB2022-02: 100 Lehigh Avenue, Block 49 Lots 8-11

a. Applicant's Representative: Mr. Ronald Gelzunas, Esq., Attorney, PO Box 1288, Wildwood Crest, NJ.

b. Mr. Gelzunas stated the following:

i. The Sisters of St. Joseph are the owners of 100 Lehigh Avenue, the former site of a large structure that was used in conjunction with St. Mary's retreat house. The property is composed of tax lots 10 and 11, each of which are conforming lots of 50 feet by 100 feet. The structure was demolished yesterday and/or today, creating two vacant lots which would be reoriented to face Harvard Avenue, although they currently face Lehigh Avenue. These lots would conform to the ordinance in all respects.

ii. Regarding 106 Lehigh Avenue, the Sisters of St. Joseph are also the owners of that property which is comprised of tax lots 8 and 9, which are fully conforming lots. 106 Lehigh is currently occupied by an 18-room structure that most closely falls under the definition of a rooming house in Borough code. This property is currently under contract to be sold, however the Borough has an ordinance that prevents the sale of a property when the adjoining property has the same owner and said sale would create a non-conforming condition. The potential non-conformity is the area between the two properties. The ordinance requires that the property owner seek relief for the non-conformity from the appropriate board. An alternative to a variance is for the Board to determine the area to be a side yard condition which pre-dates current zoning ordinance.

iii. After consulting with your Board Attorney and the Purchaser's Attorney, we are going to withdraw the request for this board to make any finding or determination as to the

use of 106 Lehigh Avenue. The Borough Zoning Officer indicated in a letter that he would like us to proceed with the remainder of the application before he will even consider issuing a certificate of land use compliance.

c. Mr. Jeff Richter, P.E, P.P., of ACT Engineers, Inc., located at Washington Blvd Suite 3 in Robbinsville, NJ, presented his credentials, was sworn in and accepted as an Expert Witness for the Sisters of St Joseph by Dr. Pfendner. Also sworn in was Sister Karen Dietrich of the Sisters of St. Joseph.

i..The history of the two structures were reviewed with the Board via screen sharing by the witness. Mr. Richter stated that both buildings were constructed in different locations in Cape May Point and moved to 100 and 106 Lehigh Avenue, respectively. A series of aerial photos showed the original locations versus their current locations. Mr. Gelzunas noted that the aerial photograph from 1970 shows the buildings in their current locations, which predates the ordinance.

ii.Mr. Richter addressed the request for 100 Lehigh Avenue first.

- The February 11, 2022 aerial picture shows all homes on the internal block along Harvard Avenue face Harvard Avenue and the water.
- The existing lots (lots 10 and 11) are 50x100, and when reoriented would remain so.
- When asked by Mr. Gelzunas if there will be a detriment to the public good, Mr. Richter replied that there would not be a negative impact by reorienting the lots.
- The proposed subdivision plan was reviewed. Mr. Richter confirmed that the Zoning Ordinance did not include any requirements regarding lot orientation.

iii. After completing the overview of 100 Lehigh Avenue, Mr. Richter proceeded to speak about the survey of 106 Lehigh Avenue.

- The building, which sits on Lots 8 and 9, faces Lehigh Avenue, with the stairway leading to a covered porch and a door that serves as access into the building. On the Lincoln side there are no doors or access.

- Mr. Gelzunas stated that if the Board agrees that the property fronts on Lehigh Avenue, the side and rear yards are compliant. The front yard encroachment, which is 7.7 feet off of Lehigh Avenue, existed prior to the current ordinance dated September 3, 1974. When asked if he was satisfied based on aerial photographs that this structure was in this location prior to that date, Mr. Richter stated yes.

- Mr. Remy asked why 106 Lehigh Avenue was being discussed if it was withdrawn from the application. Mr. Gelzunas explained that a determination of use was not being requested, but they are still seeking the side yard determination so the sale could move forward.

- In the event the Board does not agree with the orientation of the structure, Mr. Richter confirmed that this would qualify as a traditional hardship case under the C-1 standard. Due to the existing location and age of the structure modifying or moving the building to comply is not feasible.

- Mr. Gelzunas stated that Mr. Richter had the opportunity to read the review letter from Borough Engineer Mr. Dale Foster and asked him if he took any issue with what was included, and whether he is prepared to comply with Mr. Foster's requests. Mr. Richter replied that they don't take exception with any of the requirements and will provide everything requested by Mr. Foster in the subdivision plan.

d.. Board Question

i. Ms. Bassett asked if additional CAFRA approvals were applied for; Mr. Richter confirmed

that they were. She then asked if the lots were reoriented to face Harvard whether they would need an additional CAFRA permit. Mr. Richter confirmed CAFRA approval was required for both lots regardless of the lot orientation.

- Mrs. Worthington confirmed that notification of an amended CAFRA application for block 49 and lots 10 & 11 had been resubmitted.

- Ms. Junetta Dix of ACT Engineers, Inc. located at Washington Blvd Suite 3 in Robbinsville NJ presented her credentials, was sworn and accepted as an Expert Witness by Dr. Pfindner. Ms. Dix reviewed the CAFRA requirements and status in response to Ms. Bassett's question, stating the permit is pending issuance on November 4, 2022.

ii. Mr. Murphy asked if side yard determination was under the purview of the board or Zoning Official Mr. McGraw. Mr. Van Embden replied that this is a Board decision.

iii. Dr. Pfindner asked if the Environmental Commission had provided comment. Ms. Bassett stated that she is chair of the Environmental Commission, and that she sent it to the members when she received it Sunday. She received comments from a few people, but the information had not been received 10 days prior to the hearing which is a standard practice in the Borough. Ms. Bassett felt that she did not have adequate time to review the materials to which Dr. Pfindner concurred.

iv. Commissioner vanHeeswyk asked Mr. Van Embden if this should be a variance instead of a determination and asked that he explain the difference between the two. He stated that the Board has to determine what they think the front and side yards are, and from that you determine whether a variance would then be required.

v. Dr. Pfindner asked if the grant of the relief designating the rear yard would also apply to a new structure. Mr. Van Embden replied no, that a grant of this relief has the net effect of the continuation and maintenance of the existing building. We can't require that this structure remain, but this determination will allow it to remain and be sold as-is.

vi. Ms. Bassett asked for confirmation that new structures would conform to all ordinances, including height. Mr. Gelzunas stated they would have to be fully compliant with the Borough zoning ordinances. Ms. Bassett went on to explain that if granted, lots 10 and 11 will be facing the dune, and as Chair of the Environmental Commission her concern is that these properties would be facing the ocean but they will be looking at the dune, and that the owners cannot go into the dune and trim trees, or request that their house be taller. Mr. Gelzunas stated that if someone buys a lot and comes before the Board asking to build a taller house the Board can say no.

vii. Ms. Kelly stated that with respect to the minor subdivision plan there are dates that appear to be inconsistent with a survey. Mr. Richter replied and confirmed the dates correctly state the date of the original plan and subsequent revisions; Ms. Dix confirmed that the survey date was also correct.

viii. Ms. Bassett asked if everyone within 200 feet was properly notified. Mr. Gelzunas confirmed they were.

e. Public Comment – Within 200 feet

i. Ms. Kathleen Wilkinson, 106 Lincoln Ave, CMP

- Primary concern is potential flooding impact on Harvard. Ms. Dix replied that new construction would have to be compliant with DEP and CAFRA as well as local storm and flood ordinances. Ms. Dix also noted that previously there was a large structure on the two lots which limited the property's ability to manage runoff. Mrs. Wilkinson asked the Board to consider flood requirements be included in the property deeds.

- She asked about the properties potentially installing swimming pools. Commissioner vanHeeswyk confirmed that there is an ordinance in place

prohibiting pool installation. She noted that some properties obtained permits prior to the ordinance and therefore construction has been permitted, but there will be no pools at these properties. Commissioner vanHeeswyk also addressed Ms. Wilkinson's prior concerns about the flooding, stating that our ordinances are stringent about construction and we confirm to FEMA flood requirements.

- Ms. Wilkinson stated she saw something related to pools in the application. Ms. Dix said that she is referring to the CAFRA plot plan, and when they make applications for clients, they don't show a particular footprint because it locks the permit in where changes can't be made without going back to the DEP. When completing an application, they request 'the house and any accessory structures' which could include swimming pools in a community where they are permitted. Ms. Bassett asked that it be confirmed that both pools and hot tubs are prohibited, which was confirmed by Commissioner vanHeeswyk.

ii. Mr. Ed Tokarsky, 103 Lincoln Avenue, CMP

- Requested clarification on whether 106 Lehigh is to be subdivided, to which Mr. Van Embden stated no. He further asked if the structure that is already there will remain. Mr. Gelzunas stated that 106 Lehigh Avenue will remain in its current condition and there are no changes proposed.

iii. Ms. Hope Luken, 109 Lincoln Avenue, CMP

- Ms. Luken asked for the square footage of 106 Lehigh Avenue. Mr. Gelzunas stated that perhaps Mr. Richter could figure that out.

- Ms. Luken inquired about the intended use and certificate of compliance for this property and wanted to know if the public will have a chance to discuss future use, and when would that be. Mr. Van Embden clarified that lots 8 and 9 were originally requesting a determination regarding the existing conformity of the use of the structure, but they have withdrawn that request to discuss at this meeting because there is another mechanism of doing that, which is by applying to the Borough Zoning Official. The Zoning Official issued a letter stating that he would consider the request once any actions in the amended application were finalized. Based on that letter, the applicant has decided to apply through the Zoning Official for a Certificate of Compliance.

- Ms. Luken said there are people that live in the area that have questions including what does a rooming house mean, and how it is determined. She asked if there will be an opportunity for the neighbors to have those questions answered and to discuss what the historic use was and what the plans are moving forward. Mr. Van Embden replied not tonight, to which Ms. Luken asked if there will ever be an opportunity. Mr. Van Embden replied he does not know, and it would depend on the designation by the Zoning Official. If the Zoning Official does not approve the applicant's request the issue will come back in front of the Board. If the Zoning Official grants the designation, there would likely be no opportunity for public comment.

- Ms. Luken asked that this situation be considered carefully by the Board. Dr. Pfendner responded that the Board was sensitive to the concerns of the community but are limited by the rules at this time.

- Mr. Tokarsky requested to speak again, concurring with Ms. Luken that there needs to be great sensitivity to the people living in the area and a high level of transparency of what may happen at 106 Lehigh Avenue in the future. Dr. Pfendner

replied that everyone on the Board is aware of the concerns and they will do everything they can as the Board, but they are limited by the rules and it has to come to the Board in the form of an application.

iv. Mr. Ted Shatinski – 107 Lincoln Avenue, CMP

- Mr. Shatinski reiterated the comments of his neighbors about having an opportunity for public comment on this matter. The letter they received from the attorney mentioned that would be discussed at this hearing and it has been taken off the agenda. He stated that most of us are on the call because of the use. He thought this was a convent, and never heard the term rooming house before, and that the property has been in declining use by the Sisters, and injecting use of the property according to something that was done years ago that is not conforming to the existing use.

- Commissioner vanHeeswyk asked that Mr. VanEmbden explain that when a zoning officer makes a determination it's not in a public venue. She understands what everybody is saying, but the process is dictated by Municipal Land Use Law.

- Mr. Van Embden said that John McGraw issued a letter dated October 4, 2022 that stated he is in receipt of an application for a Certificate of Compliance for 106 Lehigh Avenue, and that he would not consider it until this application had been concluded. Mr. Van Embden said he personally does not know what the pre-existing use of this property is, but he does know that the applicant has the right to request the determination from the Zoning Official or the Planning Board. The public is not prohibited from speaking with Mr. McGraw regarding their concerns.

- Ms. Bassett asked if the issue might not even come in front of the Planning Board. Mr. Van Embden said it might if the applicant disagrees with Mr. McGraw's determination. If they do, they may apply to the Planning Board for interpretation, which would result in another hearing.

- Mr. Gelzunas requested the discussion about the use of 106 Lehigh Avenue be halted due to it not being relative to the current application. He also noted that the letter dated October 4, 2022 was forwarded by Borough Attorney John Amenhauser to the attorney for the Sisters of St. Joseph today, the day of the hearing, which is why it was taken off of the agenda today.

f. Public Comment – General

i. Mrs. Sandra Allison - 305 Alexander Avenue, CMP • Questioned why we feel we have to change how the town was originally laid out by the town fathers to accommodate what's happening in 2022.

- She also stated that she is aware 100 Lehigh Avenue was demolished, and wondered if two new houses would exceed the square footage of the prior structure and if that will affect runoff.

- She asked that the Board consider what she has stated when voting tonight.

ii. Mr. John Reilly - 310 Yale Avenue, CMP

- Mr. Reilly asked who approved the demolition of 100 Lehigh Avenue.

Commissioner vanHeeswyk stated Cape May Construction Department.

g. Public Portion was closed on a motion by Commissioner vanHeeswyk and second by Mr. Remy. All present voted aye.

h. Finding of Facts were presented by Dr. Pfendner

i. We have an application for subdivision and reorientation at 100 Lehigh Avenue to change two 50 by 100 foot lots from fronting on Lehigh Avenue to fronting on Harvard Avenue.

ii. In addition, there is an application to consider the determination the frontage of 106 Lehigh Avenue is Lehigh Avenue, and if so, the nonconforming front yard setback of 7.7 feet, with porch steps coming even closer to Lehigh Avenue.

iii. Mr. Wallace requested that Mr. Embden clarify the specific requests within the application. He replied that he suggests we break the requests into pieces and vote on each one.

iv. Mr. Gelzunas reiterated the application's three components as stated by Dr. Pfendner.

v. Dr. Pfendner asked if we had any restrictions based on CAFRA or the updated plans. Mr. Van Embden stated that any resolution for subdivision is subject to all state and regulatory approvals which might apply to the property.

vi. Ms. Bassett asked if these lots would have new addresses on Harvard; Mr. Van Embden said it will be set by the tax office.

i. A motion was made in the affirmative to approve the subdivision of 100 Lehigh with no variances to front onto Harvard Avenue creating two 50 x 100 lots, 10.01 and 11.01, by Ms. Kelly and second by Mr. Wallace. Ms. Kelly, Dr. Pfendner, Mr. Remy, Mr. Wallace, Mrs. Leming, Mr. Murphy, Mayor Moffatt and Commissioner vanHeeswyk voted aye; due to an oversight Ms. Bassett was not called upon to vote.

j. A motion was made in the affirmative to determine that the side yard of 106 Lehigh is located on Lincoln and neighboring boundary line along lots 10 and 11 by Mr. Remy and second by Mrs. Leming. Ms. Kelly, Dr. Pfendner, Mr. Remy, Mr. Wallace and Mrs. Leming voted aye; Mr. Murphy voted nay; Mayor Moffatt and Commissioner vanHeeswyk abstained. Due to an oversight Ms. Bassett was not called upon to vote.

k. A motion was made in the affirmative to accept that the pre-existing nonconformity of a 7.7-foot setback to the front porch of 106 Lehigh may remain by Commissioner vanHeeswyk and second by Mr. Wallace. Ms. Kelly, Mr. Remy, Mrs. Leming and Mr. Wallace voted aye; Dr. Pfendner and Mr. Murphy voted nay; Mayor Moffatt and Commissioner vanHeeswyk abstained. Due to an oversight Ms. Bassett was not called upon to vote.

### **Board Information**

1. Subcommittee Updates: Ms. Kelly stated that the light and noise subcommittee has met and are determining what their initial focus will be.

2. Mr. Wallace stated that his inquiry with Mr. McGraw regarding lot coverage clarification was still outstanding but should be completed within the next month. He confirmed he received materials from Jeff Sowers regarding his progress prior to resignation.

3. Mrs. Worthington stated she did not receive any feedback regarding interest in attending the annual conference. Anyone interested in attending should contact Elaine Wallace.

### **Public Comment**

Public comment was opened at 9:28 pm on motion by Comm. VanHeeswyk and second by Mayor Moffatt. When no one wished to speak, public comment was closed on motion by Comm. vanHeeswyk and second by Mayor Moffatt at 9:29 pm.

### **Adjournment**

The meeting adjourned at 9:29 pm on the motion by Comm. VanHeeswyk. All present voted aye.

Respectfully Submitted by:  
Rhiannon Worthington Board Secretary

Approved by Board 12/17/2023