

BOROUGH OF CAPE MAY POINT

Planning Board

Meeting Minutes

Tuesday, September 19, 2023 at 7:00 pm

HELD VIA ZOOM VIDEO/AUDIO CONFERENCE

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: Mayor Moffatt, Comm. VanHeeswyk, Mr. Remy, Mr. Murphy, Mr. Brown, Mrs. Leming, Mr. Wallace, Ms. Geiger, Ms. Bassett, Dr. Farrell

Absent: None

Also Present: Mr. Nathan Van Embden, Esq., Attorney, Mrs. Kate Dunn, Deputy Secretary

Mr. Brown gave a brief introduction. He stated that this is a combined Planning and Zoning Board that operates in accordance with the MLUL and the chartering authority of Borough governance. Cape May Point is a small community with a variety of opinions and respect for each other. Together, the volunteer members,

Borough Officials and professional staff within the board conduct board business and welcome applicants following the operational processes that fair governance asks and we welcome public input.

Minutes

Mr. Brown asked if there were any further comments on the revised draft minutes for June 20, 2023, that had been circulated to the board members from the board secretary prior to this meeting. Mr. Brown noted a few typos. No further corrections were noted and as a result, the minutes from June 20, 2023, were approved on a motion from Ms. Geiger and a second from Mr. Remy.

Business

1. Hearing for PB 2023-01-Mary Kelly and Chris Meyerink
 - A. Robert Belasco from the Law Firm Stefankiewicz & Belasco represents the applicants Mary Kelly and Chris Meyerink. The subject property is located at 510 Cedar Ave., Block 18 Lot 4.02 in the Boroughs R-1 Zoning District
 - B. Mr. Murphy and Dr. Farrell recused themselves from the discussion and voting on the application due to being within 200ft of the subject property.
 - C. Mr. Belasco stated that the subject property was recently developed with a single-family dwelling which was fully permitted through construction and zoning and fully complied with the R-1 zoning requirements. The applicant is before the board tonight because of the location of the HVAC mechanicals.

- D. Mr. Belasco informed the board that this application has 2 parts: the 1st part is an appeal of the Zoning Officer's decision. If the board sees fit to uphold the Zoning Officer's decision, the 2nd part of this application would seek the requested variance relief.
- E. Mr. Belasco informed the board that the applicant filed a zoning permit on May 24, 2023, proposing the location of the HVAC in the side yard. Mr. McGraw denied the permit on June 12, 2023, because the proposed location of the HVAC unit did not comply with "located as far as reasonably possible from any contiguous lot."
- F. Mr. Belasco cited section 150-12(i) from the Borough's Code. The code states the following: HVAC units shall not be located in the front yard, shall be located at least 15 feet from any public right-of-way and at least five feet from any side or rear lot line, and shall be located as far as reasonably possible from any contiguous lot.
- G. Mr. Belasco stated that the location of the HVAC unit meets all the bulk requirements associated with the installation of an HVAC unit. With regards to the last component which states "located as far as reasonably possible from any contiguous lot," Mr. Belasco stated that the language is subjective. He argues that this language poses a question, what is considered as far as reasonably possible from any contiguous lot?
- H. Mr. Belasco believes that Mr. McGraw relied upon that specific section of the ordinance to deny the Zoning Permit. They don't believe it's appropriate and they believe it is an arbitrary, capricious, and unreasonable standard in light of the fact that they comply with the clear standards codified in the ordinance. Mr. Belasco did some research and doesn't believe that noise from the unit will be an issue. The applicant is asking the board to overturn Mr. McGraw's decision and allow the HVAC unit to be located in the side yard location it's in.
- I. The reason Mr. Belasco believes that the denial of the permit was inappropriate is because there are clear standards. The subjective language isn't consistent with the codified clear standards in the ordinance.
- J. Mr. Brown reiterated that this is an appeal of the zoning's officer decision. If the appeal is not upheld, then the applicant is asking for a C2 variance.
- K. Ms. Geiger raised some questions to the applicant. She stated that the original package shows the HVAC unit located in the back of the house. She asked for the date of the original application. Mr. Belasco noted that he didn't have the date of the original permit but confirmed that the original proposal was to have the HVAC unit located in the rear. However, after conversations with the contractor when it was being installed, it was determined it would be costlier to run the duct work to the rear and the contractor suggested putting the unit in the side yard where it is presently located. Ms. Geiger inquired about the timeline as to when the HVAC was installed and whether there were discussions with the Zoning Officer about locating the unit in the side yard. Her understanding is that there were permits that were approved and the construction was not in compliance with the permit.
- L. Chris Meyerink, owner of the property, was sworn in. Mr. Meyerink stated that the original permit in connection with the single-family was submitted in 2021. Mr. Belasco stated that he submitted a zoning permit for the HVAC unit on the applicant's behalf in May of 2023. Mr. Meyerink confirmed that he had discussions with Mr. McGraw prior to submitting that zoning permit. Mr. McGraw ultimately denied the permit.
- M. Ms. Geiger believes that the zoning officer was consistent with his interpretation of the ordinance which was furthest from contiguous property. She also inquired about the distance from the unit to the neighboring property. Mr. Belasco stated that the applicants measured today and that it is 20ft from the unit to the wall of the neighboring property. Ms. Geiger noted that it would seem to her that the placement is at the closest from a contiguous property and not the furthest. She feels the zoning officer was consistent with the ordinance.

- N. Mr. Wallace commented on the language that states “as far as reasonably possible from any contiguous lot.” He noted that the ordinance was probably written when HVAC units were a lot louder and that language may not be as important now that HVAC units are much quieter.
- O. Ms. Bassett agreed with Mr. Wallace’s comment. She questioned what was considered “reasonable” and from what perspective. She believes that “reasonable” can be interpreted in many different ways.
- P. Mr. Remy inquired about why it took so long for the contractor to inform the applicant that the placement of the HVAC unit should be on the side and not the rear. Mr. Meyerink responded that he had multiple conversations with the contractor. The contractor ultimately recommended moving the HVAC to the side yard because it would cost less and the unit would work more efficiently.
- Q. Mr. Brown summarized the timeline as in 2021 the original permit was issued and the proposed change took place in 2023, he asked when the unit was actually installed. Mr. Meyerink stated that the unit was installed in late 2022 or early 2023.
- R. Dale Foster, the Borough and Board Engineer, was sworn in. Mr. Foster stated that in the submitted documents there is no exact measurement as to where the HVAC unit is on the side of the house nor a dimension for the yard to where the HVAC unit is. With that being said, he stated that it is difficult to make that determination as to whether the HVAC unit encroaches into the side yard setback. He made his calculations based upon the information that was provided in the packet and came up with 4.86ft from the side yard, which would be about an inch and a half into the 5ft side yard setback.
- S. A motion was made by Ms. Bassett to open the meeting to the public. Mr. Wallace seconded the motion and the meeting was opened to the public at 8:09 pm.
 - a. Stew Farrell stated he is the neighbor across the street and is familiar with the construction that has taken place on the subject property. In talking with the applicant, the unit is adjustable and they can set the unit closer to the house if need be to provide for the 5ft side yard setback. If the noise is not an issue, then he doesn’t see a problem with having the unit where it is for efficiency and for the fact that changing the ductwork is not easy and is expensive.
 - b. Mark Cruise from 508 Cedar Ave., addressed what is reasonable. He thinks there is plenty of room to make the unit fall within the 5ft. setback. He doesn’t believe it is reasonable to put an air conditioning unit on top of the porch. He doesn’t believe it will directly impact the neighbor.
 - c. Gregg Greenberg, 219 Stites Ave., stated that he has known the applicants for a long time and they always do the right thing. Mr. Greenberg stated he was previously on the board. He believes that 1.5 inches is de minimis and that given the noise levels and the fact that if the unit was placed in the back of the house, it wouldn’t be as efficient, he asks the board to overturn the zoning officer’s decision.
 - d. No further members of the public commented on the appeal or application.
 - e. Ms. Leming made a motion to close public comment. Ms. Bassett seconded the motion.
 - f. Public comment was closed at 8:15 pm.
- T. Mr. Brown asked the applicant if they were willing to install planting to shield the existing HVAC unit. The applicant agreed to do so if the board felt it was necessary.
- U. Ms. Geiger summarized the facts of the appeal.
- V. Mr. Wallace made a motion to overturn Mr. McGraw’s decision to deny the permit for the HVAC in the side yard. Mr. Remy seconded the motion.
- W. The motion was supported and Mr. McGraw’s decision was overturned with 4 members voting aye and 2 members voting nay.

2. Subcommittee Updates:

- A. Completeness Subcommittee: Mr. Brown stated that the application PB 2023-02 for 506 Cedar Ave. may be heard in October if deemed complete.

- B. Lot Coverage Awareness Subcommittee: Mr. Brown stated that the 1-page summary has been finalized and it will be posted to the Borough Website.
- C. Light & Noise Subcommittee: Ms. Bassett stated that the Light & Noise Committee has been dormant for quite a while. Ms. Bassett is Chair of the Environmental Commission and the EC is looking at light pollution within the residential zones and they will come out with a report on light pollution. With the Light & Noise committee being dormant and the EC being active in the area, the board has decided to disband the committee for the time being and will reinstate the committee at a later date if needed.

Board Information:

New member Dr. Stewart Farrell was given the Oath of Office. There has been a change in Zoning Officials. Mr. McGraw has retired and Bruce Britton is now the new Zoning Officer. Mr. Brown noted that the deadline to register for the League of Municipalities Conference is Friday, September 22, 2023.

Public Comment

- a. Public Comment was opened at 8:52 on a motion by Comm. VanHeeswyk and second by Ms. Leming
- b. No comment
- c. Public Comment was closed at 8:53 on a motion by Comm. VanHeeswyk and second by Mr. Murphy.

Adjournment

The meeting adjourned at 8:53 pm on the motion by Comm. Vanheeswyk and second by Mr. Wallace.

Respectfully Submitted by:

Kate Dunn

Deputy Board Secretary

Approved by Board 10/17/2023