

# **BOROUGH OF CAPE MAY POINT**

## **Planning Board**

### **Final Meeting Minutes**

**Tuesday, June 18, 2024 at 7:00 pm**

### **HELD VIA ZOOM VIDEO/AUDIO CONFERENCE & AT THE CAPE MAY POINT FIRE COMPANY**

#### **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: Comm. VanHeeswyk, Mr. Remy, Mr. Brown, Mr. Rusnak, Mr. Wallace, Ms. Geiger, Mr. Murphy

Absent: Mayor Moffatt, Ms. Bassett, Dr. Farrell, Ms. Shaw

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

Mr. Brown noted that the “Board Information” agenda topic on the Environmental Commission recommendation for “Light Trespass” regulation will be deferred to a future meeting because Ms. Bassett is unable to attend this meeting.

#### **Minutes**

Mr. Brown asked if there were any further comments on the revised draft minutes for April 16, 2024 that were circulated to the board members from the board secretary prior to this meeting. Mr. Brown made a suggestion to correct a typo on page 3. As a result, the minutes from April 16, 2024 were approved with the correction on page 3 on a motion from Comm. VanHeeswyk and a second from Mr. Rusnak. All present voted Aye.

#### **Business**

1. **Lot Coverage Awareness Sub Committee Presentation: Recommendations to the Commissioners:**
  - a. Mr. Brown discussed the first slide which showed which topics will be discussed: Setbacks with Overhangs, HVAC System Location and Driveways and Eco-Pavers.
  - b. Mr. Brown discussed slide #2 which was title LCA Background and Today’s Review. The slide read “LCA Subcommittee operates consistent with its charter (SR-PB2023-04) as adopted by the CMP Planning Board on 17Oct2023.” He summarized the goals of the charter, the LCA subcommittee develops proposals for potential code modifications for CMP. They develop those proposals for Planning Board review and discussion, to determine the level of support by the Planning Board. If

the proposal is sufficiently supported, the proposal is then elevated to the CMP Board of Commissioners for further consideration. The LCA has developed 3 proposals for review and input from the CMP Zoning Official and has prepared documents for each topic that were sent out to the Board Members prior to the meeting for review.

- c. Slide three was an overview of the proposals being discussed.
- d. Slide four is in reference to Setbacks with Overhangs. On this slide, there are three sections of the code: 150-12 c, 150-12 d and 150-12 h. The white text is the existing code. The text in yellow are the changes that the LCA Subcommittee proposes. Mr. Brown stated that there is a mechanism for calculating average setbacks on a lot. However, in a variety of communities, in addition to the average set back calculation, they also require that any new construction that is granted a permit, can't be more than 10 foot in front of a neighboring house. This proposed sentence would require one to meet a similar criterion. The proposed sentence reads, "Regardless of the average setback calculated, no new structure can be 10-feet closer to the street than an adjacent neighbor's structure." The next proposed corrections relate to cleaning up some language. Mr. Brown stated that essentially the setbacks in the code are designed to be if that there is a 20-foot setback, it is measured from a solid surface on the structure. The current code allows for an overhang such as a gutter or decorative overhang, up to 2.5feet, hanging in front of the solid surface. The problem is with the 3 different sections of the code, there is some ambiguous language and it is not clear if the setback should be measured from the street to the overhang or to the solid surface. The LCA is trying to make it clear that the measurement is from the solid wall of the structure and that the overhang is allowed to penetrate into that setback.
- e. Mr. Brown opened the meeting up for discussion from the Planning Board members. Ms. Geiger was seeking clarification as to what this code would apply to such as overhangs over doors. Mr. Brown gave an example of a roof over a porch as long as it did not overhang more than 2.5 feet. If the overhang is over 2.5 feet, it would be considered a covered structure and may count toward the floor area ratio. The small overhangs do not count in the floor area ratio.
- f. Comm. VanHeeswyk made a motion to open the proposal up for public comment. Mr. Remy seconded the motion. No members of the public spoke on the proposal. Comm. VanHeeswyk made a motion to close the public comment. Mr. Murphy seconded the motion.
- g. Mr. Remy made a motion to move the vote to escalate the proposal, as presented, to the Board of Commissioners. Ms. Geiger seconded the motion. All present voted Aye except for Comm. VanHeeswyk who abstained from the vote.
- h. Mr. Remy described slide five which is about HVAC System location. Mr. Remy stated that the board ran into a situation earlier, where it was unclear how the board should respond to the location of an HVAC unit. The LCA Subcommittee put together a proposal that they thought would work in the community and discussed that info with the zoning officer. Mr. Remy stated that if a HVAC system has to be placed on the side of the property, it shall be placed within 10 feet of the rear corner of the primary structure, and bushes or other plants shall be used for screening. Mr. Remy stated that it is preferred to have the HVAC structure in the rear. However, in the event that it has to be on the side, the LCA subcommittee wanted to be sure there was some clear guidance.
- i. The meeting was opened for board member comments. Comm. VanHeeswyk is concerned about any units being in a side yard because of the noise. Ms. Geiger stated that when the topic previously came about, the word "reasonably" was an issue because it makes the code subjective. She believes that taking out the word "reasonably" makes sense. Ms. Geiger stated that according to the current setbacks in the code, the HVAC units should always be placed in the back yard unless there is an odd shaped lot. She questioned why the LCA Subcommittee thought in their proposal that this would allow more HVAC units in the side yard then compared to the past. Mr. Wallace stated that if "reasonably" was taken out, it would mean that the units would have to be placed in the rear yard. Mr. Remy explained that the subcommittee was trying to propose clear guidelines if the unit has to go in the side yard and not that they are promoting the units to go in the side yard. Mr. Brown stated

that the LCA subcommittee considered several different options, one being just taking the word “reasonably” out and then the HVAC units would have to be in the rear yard or seek a variance to have it on the side yard. Mr. Wallace expressed concerns about the HVAC units being put on roofs which creates other issues. Mr. Rusnak asked why wouldn’t a variance be required for placement in the side yard. Comm. VanHeeswyk discussed the logic of the wording of the current code and stated that the units were always intended to be in the rear yard. She stated that she would be comfortable with HVAC units coming to the board for a variance if the unit needed to be placed in the side yard. Ms. Geiger believes that applying for a variance would take away the ambiguity and it would be able to be enforced more consistently. Mr. Brown stated that if the proposed text was not in the code and a variance was required in order to put an HVAC in the side yard, then at that time the board could require the unit to be 10 feet away from the rear. Ms. Geiger believes by adding the last proposed sentence to the code would add back ambiguity. Mr. Murphy believes that leaving the last proposed sentence in the code is ok. Mr. Wallace suggested that the new units are a lot quieter than they used to be.

- j. Mr. Brown opened the proposal up for public comment. Public comment was opened on a motion from Comm. VanHeeswyk and a second by Mr. Wallace. Catherine Busch asked whether HVAC units were intended to be on the roof. Mr. Brown stated that the proposal itself is silent on roof locations. Mr. Rusnak believes it is a preference of contractors to put them on the roof. Mr. VanEmbden stated that many contractors like to put HVAC units on a roof or deck because it’s away from flooding, it’s secure and they can accommodate the installation with the buffering and walls in such a way that the air and noise would discharge vertically above and not out towards neighboring homes. Mr. Wallace suggested revisiting the proposal. No other members of the public spoke on the proposal. Public comment was closed on a motion from Comm. VanHeeswyk and a second from Mr. Murphy.
- k. Mr. Brown explained the options to move forward as being: #1-table the proposal and have the LCA subcommittee come back with an updated proposal; #2-take the current code and strike out the word reasonably; # 3-take the proposal that was surfaced. Or #4- to elevate the proposal to the Commissioners and realize that the Commissioners have the power to write the code as they feel necessary. Mr. Rusnak asked if the proposal covered generator locations as well. It was unclear whether there is another section in the code regarding generators. After further discussion, it has come down to either tabling the proposal or striking out the word reasonably and forwarding the proposal to the Commissioners for further consideration.
- l. Mr. Murphy made a motion to table the proposal and Mr. Rusnak seconded the motion. The motion was approved with 4 Aye votes. Comm. VanHeeswyk and Mr. Brown abstained from the vote. Mr. Remy voted nay.
- m. Slide six is in regards to Driveways and Eco-Pavers. Mr. Wallace explained that there were not clear definitions for eco pavers and driveways in the code. The proposal from the LCA subcommittee basically clarifies driveways generally and more specifically eco pavers. Mr. Wallace read through the proposal as indicated on slide six. Item e (i) reads: Concrete and Asphalt (in all forms) are not acceptable. Mr. Wallace noted that there are forms of concrete and asphalt that are considered pervious now so the proposal will rule out concrete and asphalt as driveway coverage. He stated that item e(ii) and e (iii) are essentially a clarification of what is already in the code. Item e (iv) states that masonry pavers are acceptable but with a limited size of block so that they remain pervious and don’t become a concrete driveway. Item e(v) provides some definitions and structure regarding eco pavers and that they will only be given half credit for vegetative coverage.
- n. Mr. Brown opened the proposal up to discussion from board members. Ms. Geiger appreciates the LCA Subcommittee making the code clearer. She had a question on the masonry paver systems which was why was it decided that those are considered pervious. It seems odd to her that CMP would allow a paver system instead of stone or something of that matter. Mr. Brown stated even though the slide shows new proposals for code, what the subcommittee was trying to do, was to

capture what has been allowed to date. Masonry pavers systems as pervious driveway material, have been allowed. Ms. Geiger further went on to say that she doesn't believe the absorption will be adequate with the masonry blocks to prevent runoff into the street. Mr. Wallace noted that with these systems that most of the issues are within the subsurface and not actually within the surface so almost all of these systems have a high absorption rate. Comm. VanHeeswyk agrees with Ms. Geiger. Mr. Wallace suggested changing the proposal to eliminate masonry paver systems as being pervious. Mr. Brown noted that if the Commissioners decide to make any changes to the code, properties with existing non-conformities would be grandfathered in and would not have to replace what is already there unless they were making modifications to the property that would trigger the need for the property to be brought up to current codes. Mr. Remy talked about the vegetative coverage credit proposed for Eco pavers. Mr. Wallace stated that the amount of credit toward vegetative coverage was never in the code before, it was just an interpretation. Ms. Geiger suggested that grass does not need to specifically mentioned in the Eco paver section, in that some believe grass has unwanted characteristics. She asked if the word "grass" could be replaced with "vegetation" or similar.

- o. The meeting was opened to the public on a motion by Comm. VanHeeswyk and a second from Mr. Wallace. No members of the public spoke on the proposal. Comm. VanHeeswyk made a motion to close public comment. Mr. Remy seconded the motion.
- p. Mr. Wallace made a motion to modify the proposal to add masonry pavers up to point (i) with concrete and asphalt as not acceptable and strike out grass in point (ii) and replace it with vegetation. Mr. Rusnak seconded the motion.
- q. The proposal was approved with the above two changes with 5 aye votes. Comm. VanHeeswyk abstained from the vote and Mr. Brown voted nay.
- r. Mr. Brown discussed slide seven. He thanked everyone for engaging in the discussion on the 3 topics today. On the two topics that received support to elevate to the Commissioners, he will plan to prepare letters to the Commissioners communicating the proposed changes in the final form that was voted on. In the future, the LCA Subcommittee will bring additional topics for discussion.

## 2. Subcommittee Updates:

- a. **Completeness Subcommittee:** Mr. Murphy stated there is no indication that there are any new applications at this time.
- b. **Lot Coverage Awareness Subcommittee:** No further comments at this time.

**Board Information:** Mr. VanEmbden described the process regarding the appeal for the recent 506 Cedar Ave decision. Mr. Brown commented on the DEP is working on some new flood regulations that would include elevating houses. He has read that the DEP is now socializing with the public and they are getting ready to send the regulations to Trenton. Comm. VanHeeswyk added that there will be a county meeting and during the comment period, the county and municipalities will be fighting the new regulations. Mr. Deitrich will speak to the Commissioners regarding these regulations after the meeting at the county.

## Public Comment

- a. Public Comment was opened at 8:24 on a motion by Mr. Murphy and a second by Mr. Remy.
- b. No comment
- c. Public Comment was closed at 8:25 on a motion by Comm. Vanheeswyk and a second by Ms. Murphy.

## Adjournment

The meeting adjourned at 8:25 pm on the motion by Comm. Vanheeswyk and second by Ms. Geiger.

Respectfully Submitted by:  
Kate Dunn  
Board Secretary

Approved by Board 09/17/2024