

BOROUGH OF CAPE MAY POINT

Planning Board

Final Meeting Minutes

Tuesday, December 17, 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, Ms. Bassett, Dr. Farrell

Absent: Mayor Moffatt, 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 would like to thank Mayor Moffatt for his dedicated service to the Cape May Point Community. He also would like to congratulate Commissioner VanHeeswyk on her re election and Elise Geiger and Suzanne Yunghans on being elected as new Commissioners.

Minutes

Mr. Brown asked if there were any further comments on the revised draft minutes for September 17, 2024 that were circulated to the board members from the board secretary prior to this meeting. A few other corrections were noted; removing the word eco from several paragraphs. As a result, the minutes from December 17, 2024 were approved based on the revisions noted on a motion from Mr. Rusnak and a second from Mr. Murphy. All present were in favor.

Business

1. Lot Coverage Awareness Subcommittee Presentation: Development of updated recommendation of HVAC Code Change

- a. Mr. Wallace referred to slide 2 of the presentation. He stated that this slide summarizes the new Lot Coverage Awareness Subcommittee role. The LCA Subcommittee continues to get input from Bruce Britton on each of the things that they are proposing, the most recent of which is on the location of HVAC and related equipment. The issue with current code was the subjective wording about “as far as reasonably possible from contiguous lots”. The wording was too subjective and created an issue

for the Zoning officer and for homeowners doing construction. The LCA Subcommittee is attempting to make it clearer. The problems are if you take out the word “reasonably”, it forces the HVAC to the backyard. If you take out the phrase “as far as possible from any contiguous lot”, it would allow HVACs to be placed anywhere on the lot, except in the setbacks. Neither of these options are desirable. What the Committee has tried to do is to craft wording that allows for some discretion by the zoning officer for situations in which it may very well be better to put it in a side yard than in the backyard, with the same idea being, in general, it should be in the back.

- b. Mr. Wallace stated that what the Committee has attempted to do is to have some wording that more or less steers homeowners to put it in the backyard, but allows for some discretion by the zoning officer to put it in the side yard, if it makes sense. In most situations, it won't cause a problem. Allowing the zoning officer to make these decisions would, in all but rare cases, mean that there would be no need for a variance and the decision would not come to the zoning board thus not putting a burden on the homeowner.
- c. Mr. Wallace also stated that there were a few other changes. One, generators were added to the list of the equipment subject to the code. Second, duplicate wording about placement relative to the public right of way was clarified. Third, a noise standard was added. However, the issue about placing HVAC units on the roof that had been raised is not included.
- d. Moving on to slide 3 which states the following: In order to protect each property from the necessary noise from operating, services otherwise using mechanical equipment associated with any structure, including heat units, ventilating units, air conditioning units, heat pumps (other than individual air conditioning units) and whole house generators hereafter to install and serve any existing building or structure, or a building or structure to be erected in any zoning district, shall not be located in a front yard, shall be located at least 15 feet from any public right away, and at least 5 feet from any side or rear lot line. If at the zoning officer's discretion, equipment is allowed to be placed in the side yard, it must be no closer than 60 feet from the street in the front of the house, and bushes or other plants shall be used for screening. All equipment referenced here shall have a manufacturer rating of less than 65 db.
- e. Mr. Rusnak questioned if 65 decibels was the standard. Mr. Wallace stated that the noise standard 65db during the day and 50db at night is the standard suggested in the New Jersey model noise ordinance. After discussion about the decibels of generators, it was decided that if we stick to the manufacturer rating, it should eliminate confusion on how many decibels the equipment may be. The decibels would be listed on the specification sheet that would need to be provided to the Zoning Officer.
- f. Mr. Farrell asked if this is going to apply just to a whole house built-in standby generator? Would a portable gasoline power generator not fall into this category? Mr. Wallace replied that the portable generator is not included in this code at this time.
- g. Ms. Geiger stated that when she first read the proposed code change, she didn't quite understand how it pushes it to the rear. To her, it seemed like it's discretionary whether the equipment be to the side or rear onto the zoning official to make the decision. She doesn't want put our zoning officer in a situation such as what spurred this whole discussion. She stated that the code that exists now states: which is located as far as reasonably possible from any contiguous lot. She thinks that the word “reasonably” was always a problem, but the “far as possible from any contiguous lot” tends to push it to the back.
- h. Mr. Rusnak stated that to him, it's a deductive thing. It can't be in the front yard. If it's in the side yard, it's at the zoning officer's discretion, and that only leaves you at the back. Then there's that where are you 60 feet from the street.
- i. Mr. Brown stated that the preferred location they heard from the board last time was that they would prefer it to be in the back. Mr. Wallace stated that they are noticing that there are cases when we may not want that, and it may not be optimal as there are some situations where these lots are triangular

lots or on a corner lot. Ms. Geiger agreed and thinks that's why the wording in the original ordinance was reasonable. That gave a discretion to the zoning officer.

- j. Ms. Geiger suggested putting back the language "as far as possible, except for at the discretion of the Zoning Officer."
- k. Commissioner VanHeewyk stated that this code was written originally to keep it as far away from other houses so that the houses on the sides didn't have to listen to someone's mechanical equipment. The way it was written was in the rear yard as far as possible. Putting it in a side yard, and she realizes that there may be some unique situations, but putting it in any side yard on normal lots would put it closer to someone's home.
- l. Mr. Wallace stated he thinks we all agree with that. The idea is to put it as far away from other people as possible. There may be some exceptions that no one would object to and, in these cases, we don't want to force people, the homeowner or ourselves, to go through the process and expense of needing a variance.
- m. Mr. Rusnak suggested adding "shall be located in the rear yard, if possible." Mr. Wallace didn't think it needed "if possible".
- n. Mr. Brown wanted to clarify the proposals. Mr. Rusnak's proposal was suggesting that it read in the middle of this section where it says where it shall be (reading the red section) it says, "... and whole house generators, hereafter installed to serve any existing building or structure, or a building or structure to be erected in any zoning district." Mr. Rusnak's proposal would add the words "shall be located in the backyard" and then continue on with what's written on the screen, in black text, "and shall not be located in the front yard, shall be located at least 15 feet from the public right away, and so on. That would be one proposal. Ms. Geiger would augment that proposal by inserting "as far as possible from any contiguous lot" and it would not mention the rear yard. Ms. Geiger's proposal would read starting with whole house generators, "... and whole house generators hereafter installed to serve any existing building or structure, or a building or structure to be erected in any zoning district, shall be located as far as possible from any contiguous lot ...", and then continue on.
- o. Mr. Remy suggested merging the two ideas to read. Mr. Brown then suggested the proposed code change would read, "...shall be in the rear yard as far as possible from any contiguous lot ...", and then continue on with what's proposed there.
- p. Mr. Brown summarized the collected proposal by stating that slide 3 would read as follows: "In order to protect each property from the necessary noise from operating, servicing or otherwise using mechanical equipment associated with any structure, including heating units, ventilating units, air-conditioning units, heat pumps (other than individual air-conditioning units) and whole house generators hereafter installed to serve any existing building or structure, or a building or structure to be erected in any zoning district, shall be located in the rear yard as far as possible from any contiguous lot, 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. If, at the zoning officer's discretion, the equipment is allowed to be placed in the side yard, it must be no closer than 60 feet from the street in the front of the house and bushes or other plants shall be used for screening. All equipment referenced here shall have a manufacturer rating of no more than 65 dB."
- q. Mr. Remy made a motion to adopt the proposal. Ms. Bassett seconded the motion. All present voted Aye.

2. NJLM Conference Debrief - including PB connectivity to Affordable Housing 4th Round Process and Climate Change-Related Hazard Vulnerability Assessment (CCRHVA)

- a. Mr. Brown stated that this was his first time going to New Jersey League of Municipalities in Atlantic City. He wanted to mention a few things that he had heard and then go into two specific topics around affordable housing fourth round and the climate change-related hazard vulnerability assessments. He would recommend the conference to anyone. The audience is quite a few attorneys, most mayors in the municipalities in New Jersey, a lot of governing officials from those municipalities, a good number of planning and zoning board members, and a lot of municipal staff.

- b. Mr. Brown attended one session and learned that the State of NJ is redoing their master plan, the State Development Plan.
We, as municipalities, have to have our own master plan and there's a county master plan. The state is working on its own revision coming in 2025. There's a whole process once the state has a new master plan that municipalities have to go through to make sure that their master plans are in sync with the state master plan. He went to another session that talked about different variances and the types of proofs that are required. They gave some case law examples. He went to a different session on accessory dwelling units, which seemed to be a popular topic. He also went to a session on Stormwater management and AI use by Governments. He also attended the Cox Symposium, a session on affordable housing and a session on CCRHVA.
- c. Mr. Brown went on to talk about the affordable housing fourth round. He stated we recently heard that the prospective need calculations for the fourth round were published. For Cape May Point, it has the number five as what is needed in the next 10 years. There are more than 20 municipalities who are legally fighting the new process right now, and there are upcoming court deadlines. Either one of those has the potential to derail the timeline that's shown on the right-hand side of this slide. The timeline essentially says that the municipalities have until the end of January to say what the number is they're going to try and meet in the next 10 years. And then in the month of February, that number can be challenged by the fair housing authorities in the state. Then at the end of February or at the beginning of March, the number that comes out of that process would be the number the borough has to meet.
- d. Mr. Brown stated the reason he is talking to the planning board about this is the master plan has to be amended by this June 30th deadline in order to accommodate the process outlined for the affordable housing fourth round. It means that we would have some involvement in the run up to June 30 to help the commissioners and municipality stay on track, because if we do not stay on track, then we may forego our legal protections against builder's remedy lawsuits etc. The bottom of this slide says: Municipal governance has got a lot of activity involved in the early part of 2025. The planning board would have a role, presumably in the second quarter and expect to have more meetings than we typically do in that period of time, and we will have to be nimble in reacting to what the commissioners need or are proposing to us so that we stay on track to meet the legal requirements.
- e. Mr. VanEmbden stated that we've all seen the Mount Laurel I, Mount Laurel II. If we have a five-unit requirement as estimated by the preliminary numbers, he thinks that's an incentive for us to craft our own master plan to encourage or give an alternative option to builders to have a greater density, perhaps, and to allow a duplex here and there, where the extra unit would be compliant with affordable housing. It sounds like there's good news and prospects of being able to comply.
- f. Comm. VanHeeswyk stated that she has been in touch with the Borough's planner, Michael Sullivan. He feels we don't need to do this. She has been working on COAH since round two. Recently, they were talking about this deadline of January 31st. Mr. Sullivan feels strongly that because the Borough is not a planned center and it doesn't have open space, they're not going to make the borough do this. The unmet need is five, but our current number that they've settled on is zero. If by the end of January, we're accepting that number, which is zero, that will hold for 10 years. There needs to be a resolution adopted by the Borough by the end of January regarding this.
- g. Mr. Brown clarified that there is a current need and a prospective need. The perspective need is what they anticipate the Borough will need between 2025 and 2035. While the Borough is not currently deficient, Cape May Point may need to build five units over the next 10 years.
- h. Mr. Brown discussed the CCRHVA more. He stated that the specifics that the law requires municipalities to do is listed on this slide. Five of these points relate to an assessment that is

captured in an informative table. He also noted that a build-out analysis is also requested. He referenced the last slide, and he recommends that we move forward and work on a CCRHVA in 2025 because the master plan reexamination or a new master plan is required in 2027. He would like to work on a CCRHVA in 2025 as a precursor to master planning activity. He is suggesting that a team of 6 to 8 people be put together in order to work on this process. He asked that potential volunteers contact him by Feb 1.

3. Subcommittee Updates:

- a. **Completeness Committee:** Mr. Murphy stated that we do have one new application, 2024-02 from the New Jersey Audubon Society on Lighthouse Avenue and the Completeness Committee will be trying to meet shortly to address any issues and make sure the application is complete. That application could be heard as soon as the January meeting.
- b. **Lot Coverage Awareness Committee:** Mr. Wallace mentioned that the Zoning Officer gave the Committee a few topics to take a look at in the future. Mr. Brown stated that there will be an opening on the Committee since he will be stepping away from the Committee to work on the CCRHVA. Those potentially interested in serving on the LCA subcommittee should contact Mr Brown.

Board Information: No comments.

Public Comment:

- a. Public Comment was opened at 8:32pm on a motion by Mr. Murphy and a second by Ms. Bassett.
- b. No comments.
- c. Public Comment was closed at 8:34pm on a motion by Mr. Remy and a second by Mr. Wallace.

Adjournment

The meeting adjourned at 8:34 pm on the motion by Mr. Rusnak and second by Ms. Geiger.

Respectfully Submitted by:

Kate Dunn

Board Secretary

Approved by Board 02/18/2025