

# **BOROUGH OF CAPE MAY POINT**

## **Planning Board**

### **Final Meeting Minutes**

**Tuesday, March 19, 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: Mayor Moffatt, Comm. VanHeeswyk, Mr. Remy, Mr. Brown, Mr. Rusnak, Mr. Wallace, Ms. Geiger, Dr. Farrell, Mr. Murphy

Absent: Ms. Bassett

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 January 16, 2024 that were circulated to the board members from the board secretary prior to this meeting. No further corrections were noted and as a result the minutes from January 16, 2024 were approved on a motion from Comm. VanHeeswyk and a second from Mr. Murphy.

Mr. Brown thanked Ms. Leming for serving on the planning board for 5 years and acknowledged Dr. Farrell's appointment by Mayor Moffatt to the full-member seat vacated upon Ms. Leming's resignation. Mr. Brown also welcomed our new alternate member Mr. Rusnak.

#### **Business**

1. Mr. Rusnak was given the Oath of office by Mr. VanEmbden. Mr. Rusnak introduced himself to the Planning Board.
2. Application PB 2023-02-Phyllis Graham and Melissa Bailey
  - A. Mr. Murphy, Stewart Farrell and Mayor Moffatt recused themselves from this application as they are within 200ft of the property. With their recusals, Mr. Brown noted that Mr. Rusnak would participate as a voting member for this hearing.
  - B. Steve Morris represents the applicant Phyllis Graham and Melissa Bailey. All 3 attended the meeting.

- C. Mr. Morris stated that this application has been listed on the agenda more than once and wanted to share with the members the reasons why the application is being heard in March of 2024 and not November of 2023. The applicant was originally scheduled to be heard in November of 2022 and prior to that meeting one of the neighbors voiced some concerns so the applicant requested an adjournment in order to address those concerns. They then had a change in their presentation team and now they are ready to move forward with the application.
- D. The property is located at 506 Cedar Ave., Block 18 Lot 6.01 in the R-1 Zoning District.
- E. Mr. Morris indicated that the property is a single parcel which is 10,000 square feet in total and is developed with a single-family home, a detached garage and a shed. The property has been in the Graham family since the early 1950's with Ms. Graham inherited property in approximately 1981.
- F. Mr. Morris stated that as indicated the property is a large, oversized parcel that is 10,000 square feet. He stated that it wasn't always one lot. At one point it was two separate parcels. At some point in time, which Mr. Morris believes was around November of 1998, Ms. Graham and her late husband decided to consolidate the parcel into one lot.
- G. Mr. Morris stated that the applicant is before the board tonight seeking to undo that consolidation and to create two separate lots. He noted that the single-family home that currently exists on the lot was built in 1997 and at that time, they obtained some variance relief in order to build the home, more specifically for the minimum front yard setback.
- H. Joseph Maffei, P.E. from Engineering Design Associates, was sworn in. He gave his credentials for the benefit of the board. The board accepted his credentials.
- I. Mr. Maffei stated that the minimum lot size in the R-1 zone is 5,000 square feet with 50 feet of lot frontage. There are currently two pre-existing non-conformities that exist on the property, one is the front yard setback for the house that was previously approved at 15.5ft and that will not change.
- J. Mr. Morris stated that if the board were to grant the subdivision that is being requested, both parcels would contain the minimum lot size of 5,000 square feet but would create a complexity that a stand-alone garage would be located on one of the parcels.
- K. Mr. Maffei stated that this application is a minor subdivision. Assuming the application is approved the applicant has 190 days to file the subdivision from the time the resolution is adopted. The board could require the applicant to have the garage torn down prior to filing the map or post a bond with Borough so that the subdivision can be filed and the applicant can keep the garage until they are ready to move forward with construction. The bond would insure that the garage is torn down at that time. A different procedural option would be to pursue a D-3 variance (conditional use) to maintain the existing garage on the proposed lot 6.02 created by the subdivision.
- L. Mr. Maffei talked about the side yard setback to the accessory structure which is a shed. Where the new lot line is created, the applicant would require a variance to allow the shed to be 1.4 feet off the property line. As for the aggregate side yard setback, that would be to the main structure and the applicant is not requesting a variance for that.
- M. Mr. Maffei talked about the vegetative coverage and that if the board were to approve the subdivision, the applicant would require a variance for vegetative coverage. Part of the reason it wouldn't meet requirement is because the existing stone driveway. However, the applicant is willing to install eco pavers in order to compensate for that deficiency.
- N. Mr. Maffei stated that 2 variances that were discussed would fall under the C2 criteria in which the benefits outweigh the deterrents.
- O. Mr. Maffei discussed the benefits of the project such as the property exists as-is and there is no new development proposed on the current lot. Any new development on the new lot would meet all the current code requirements. He doesn't believe there is any deterrent to the public good.
- P. Mr. Morris stated that he believes that two 5,000 square foot lots would be more in character with the neighborhood than one 10,000 square foot lot. Mr. Maffei agreed and stated that most lots in the neighborhood are 5,000 square feet in accordance with the ordinance.

- Q. Mr. Morris stated that if the owner of the property were to demolish all 3 structures on the property, they would be entitled to a by-right subdivision without any variances or approvals. He believes by granting the subdivision with the property as-is would keep the property more in character with the neighborhood.
- R. Mr. Morris stated that part of the reason for the application is that the property has been in the Graham family for many years and so that Mrs. Graham's daughters can each have a piece of land where they can build their families a home and continue the family legacy on the property.
- S. Mr. Maffei stated the shed is currently 1.4 from the newly created property line on the east side of the property. He suggested that the board could require a 10ft side yard set back off the newly created lot line on the east side, for proposed parcel 6.02, and 5ft. on the west side in order to meet the overall 15ft. side yard setback requirement.
- T. Mr. Remy confirmed that they are proposing to remove part of the existing stone driveway and replace it with eco pavers in order to meet the vegetative coverage requirement.
- U. Ms. Geiger questioned the distance from the newly created lot 6.02 to the next house over. Mr. Maffei confirmed the next house over is 7.1 ft off the property line so there would be about 12ft between the two structures.
- V. Mr. Wallace questioned the mechanism in which the setbacks would be enforced. Mr. Maffei stated that the mylar that gets produced and filed with the county would have those setbacks on there and is then enforceable by the borough even if the property were to be sold. Mr. VanEmbden stated that he agreed and that restriction can be memorialized in a resolution and can be put in a deed restriction.
- W. Mr. Rusnak questioned about moving the shed. Mr. Maffei stated it wouldn't be easy to move and one concern he has would be the nearby trees in the back yard.
- X. Mr. Brown stated that by his calculations, if the stone driveway was turned into eco pavers, that would be 860 square feet and Mr. Maffei stated that the property is currently approximately 875 square feet short of the 60% vegetative coverage.
- Y. Mr. Wallace asked about shortening the driveway. Mr. Maffei stated that whether they shorten the driveway or not and put eco pavers, it is still the same square footage.
- Z. Mr. Brown questioned if there was a garage in the back of the existing home.
- AA. Melissa Bailey was sworn in. She stated that there is an attached shop in back of the existing house. There is a garage door so you can enter from the back and where they have storage and their laundry facility. A car would not fit in this area.
- BB. Ms. Geiger questioned whether the garage was part of the diagram given in the application packet. Mr. Maffei confirmed that it is on the diagram and included in the foot print of the house.
- CC. Mr. Maffei discussed grass pavers and stated that grass pavers would look like grass but have a hollow block that would allow for them to be driven over while still maintaining the grass.
- DD. Mr. Brown read into the record the email from the Environmental Commission dated November 8, 2023 that had been sent out to all members. The email recommended that the Planning Board enforce Chapter 150-21 and require that the lot be covered in 60% of vegetation and that a variance not be granted on the proposed subdivided lot where the main dwelling exists.
- EE. Mr. Brown wanted to understand more of the chronology of the property. The Graham family originally took ownership of the property in the 1950's. Ms. Graham and her husband inherited the property in 1981. The property was merged into one lot in November of 1998. Mr. Brown talked about moving the shed parallel to the road towards the house by 4ft., he doesn't see any trees in that area. Mr. Maffei responded that the problem would then be if you move the shed toward the house and don't move it back, it wouldn't meet the requirement of 10ft. from the house to the shed.
- FF. Mr. Brown talked about the existing garage on the proposed lot. He asked Maffei for clarification on the bond and time frame in which the garage would be demolished. Mr. Maffei stated that as a minor subdivision, once it's approved, the applicant has 190 days to file the subdivision. He stated that the Grahams are not ready to construct a new home on the new lot at this point, in order to file the subdivision within that time frame, one of the leverage requirements that some towns use to for the

applicant to post a bond to make sure that the garage does in fact get torn down. The bond would stay on file until the garage is torn down.

- GG. Mr. Wallace discussed shortening the driveway again. He stated that if this was a new home being built, the driveway would be about 400 square feet and the existing driveway is about 800 square feet.
- HH. Mr. Morris stated that there is an existing concrete pad in the back of the property that is used for HVAC and to store trash cans. He stated that the applicant would be willing to break up that concrete in order to meet the vegetative coverage requirements of 60%.
- II. Mr. Rusnak wanted clarification from the Board Engineer that the grass pavers are considered vegetative. Mr. Foster confirmed that they are considered vegetative.
- JJ. Public Comment was opened at 8:02 on a motion from Ms. Geiger and second by Mr. Remy.
- KK. Philip Rozensweig from Silverang, Rozensweig & Haltzman, LLC spoke on behalf of clients, Dr. Carole Koff-Sklar and Dr. Barry Harris. Mr. Rozensweig wrote a letter of objection dated January 9, 2024 that was received and distributed to the board prior to the meeting. The board allowed the letter to become part of the record. Mr. Rozensweig stated that Dr. Koff-Sklar and Dr. Harris are the long-time owners of 505 Holly Dr. which is located to the rear of the property and would be directly impacted by this subdivision. He stated that the objections of Dr. Koff-Sklar and Dr. Harris relate to the standards of both the C1 and C2 variances. He stated that with the C2 variance, it is not merely weighing the benefits and detriments with respect to the impact of that variance but the statute says that a C2 variance is appropriate if the deviations from the zoning ordinance would advance the purposes of the zoning plan and if the benefits would substantially outweigh any detriments. He stated there is clear detriment to his client's property and for the many decades that they have owned 505 Holly, there has not been a single house behind them (on proposed parcel 6.02) and this would be a material deviation from that and would be a detriment to them and their property and they believe to the neighbors and the neighborhood. He stated that there has been no evidence that there would be an advancement of the zoning plan. With respect to a C1 variance, in his opinion the applicant has not shown a hardship which is a fundamental requirement of a C1 variance. He stated that all of the conditions for which the applicant seeks variance relief are conditions in which they can provide remedy on their own. He stated that the reasons for variance relief can not be any reason to benefit the property owner at all and not sufficient for the granting of a variance. He doesn't believe that they are entitled to any variance relief that they are seeking.
- LL. Mr. Morris stated since the board has made Mr. Rozensweig's letter part of the record, he wanted to put on record that there is an error in the letter in that the letter indicates that this subdivision would create two lots that are insufficient in size which is not the case. Each lot would be 5,000 square feet which meets the Borough's ordinance requirements.
- MM. Christopher Meyerink who resides at 510 Cedar Ave. stated that the Grahams have been very good stewards of the property for many years and he doesn't see a problem with this application being approved.
- NN. No other members of the public spoke on the application.
- OO. In response to the Mr. Rozensweig's objection, Ms. Bailey stated that up until about 1997 or 1998 there was a house on 504 Cedar Ave. which is the newly proposed lot 6.02.
- PP. Public comment was closed at 8:16pm on a motion from Mr. Remy and a second from Ms. Geiger.
- QQ. The board members discussed their findings; Mr. Remy concluded that the applicant will turn the driveway into an eco-paver environment to satisfy the 60% vegetative coverage requirement along with removing the concrete pad in the rear; Ms. Geiger concluded that the non-conformities would be the 60% vegetative coverage but believes the applicant has ways to comply with requirement. She agrees with Mr. Wallace that the driveway could be shortened. She talked about the shed being 1.4ft from the property line and that the applicant would put a deed restriction on the new lot to allow for more space in between the shed and the new structure. Mr. Rusnak added that the original plan has this established as two lots and it was consolidated by the owners in 1998 which are the same owners

today. Mr. Wallace agreed with Ms. Geiger statements and thinks the subdivision and deed restriction makes sense. He is more concerned with the vegetative coverage. Mr. Brown stated that there has been a lot of discussion in regards to the non-conformities and possible remedies for them. He stated they all agree that there are some pre-existing non-conformities. He stated that in addition to the facts presented today, there is a desire by the applicant to maintain the neighborhood as it currently exists to minimize disruption to the public and maintaining senior citizen housing when possible. He is mindful of the neighbors who would see less open space if Lot 6.02 were to be developed. He has heard from the applicant some compelling reasons what they are proposing and he sees some special reasons of why the application would have merit.

RR. Mr. Morris stated that the applicant is willing to offer one more concession in regards to the driveway. Currently the driveway is approximately 61ft. The applicant is willing to shorten the driveway to 40ft.

SS. After further discussion and further proposals from the board members, Mr. VanEmbden summarized the proposal as an application to approve a minor subdivision creating two 5,000 square foot lots with 50 feet of frontage designated as lots 6.01 and 6.02 on Cedar Ave. The parcel designated as 6.01 will come into compliance with the 60% vegetative coverage requirement with shortening the driveway to 40ft., using eco pavers for to replace the current stone driveway and break up the existing concrete pad in the rear of the property. Lot 6.01 will also require a variance for the shed to be 1.4ft off the newly created lot line and therefore will require a variance for minimum side yard setback. The board will require the newly created lot 6.02 to be deed-restricted to render a 10-foot side yard setback between lot 6.01 and 6.02 and a 5-foot side yard setback on the other side toward the neighboring lot. In addition, the applicant will post a bond guaranteeing the removal of the garage and concrete driveway on lot 6.02 when the applicant is ready to develop the new lot.

TT. Ms. Geiger made a motion to move to a vote. Mr. Remy seconded the motion.

UU. All 5 voting members (Brown, Geiger, Remy, Rusnak, and Wallace) voted Aye and the application was approved.

### 3. Subcommittee Updates:

- A. Completeness Subcommittee: Mr. Murphy informed the board that there are no new applications in the pipeline at this time.
- B. Lot Coverage Awareness Subcommittee: Mr. Brown gave a quick update. They are glad to see that the Commissioners had a first discussion related to the proposal that the LCA elevated to them about a new landscaping plan getting triggered for a major renovation. The LCA sub committee is working on the next topics and proposals to bring to the Planning Board in the near future.

**Board Information:** Mr. Brown thanked Rhiannon Worthington for her work behind the scenes over the past months. She has prepared a new member orientation sheet, an application and review flow chart process and more recently has helped with articulating the steps in a master plan reexamination. He stated that in April, the board will have their annual re-organization meeting. At that meeting it will be time to nominate and vote for our professionals, a chairman and vice chairman and on our calendar dates.

### Public Comment

- a. Public Comment was opened at 8:54 on a motion by Mr. Murphy and second by Ms. Geiger.
- b. No comment
- c. Public Comment was closed at 8:56 on a motion by Mr. Remy and second by Mr. Murphy.

### Adjournment

The meeting adjourned at 8:56 pm on the motion by Ms. Geiger and second by Mr. Murphy.

Respectfully Submitted by:  
Kate Dunn  
Board Secretary  
Approved by Board 04/16/2024