

# **BOROUGH OF CAPE MAY POINT**

## **Planning Board**

### **Final Meeting Minutes**

**Tuesday, June 17, 2025 at 6:30 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: Mr. Remy, Mr. Brown, Mr. Rusnak, Comm. Geiger, Dr. Farrell, Ms. MacKenzie, Mr. Wallace  
Absent: Ms. Shaw, Mr. Murphy, Ms. Hobdy, Ms. Shufelt, Mayor VanHeeswyk  
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.

#### **Minutes**

Mrs. Dunn asked if there were any further comments on the revised draft minutes for May 20, 2025 meeting that were circulated to the board members from the board secretary prior to this meeting. No other corrections were noted. As a result, the minutes from May 20, 2025 were approved, as amended, on a motion from Mr. Remy and a second from Mr. Wallace. All present were in favor.

#### **Business**

1. **SR PB 2025-07-Extension for Phyllis Graham and Melissa Bailey (506 Cedar Ave)**
  - a. Mr. VanEmbden stated that the application for 506 Cedar Avenue was heard, approved, appealed, and finally resolved, by an agreement between the parties which resulted in the withdrawal of the appeal. The dismissal of the appeal left us back to where we started, but the start was more than 11 months ago. The applicant was unable to comply with their obligations under the terms of the original approval because they couldn't act while the appeal was pending. The applicant is now asking for an additional amount of time, 120 days to complete their obligations. Mr. VanEmbden prepared a resolution which would put them back in the position they were at the time of the appeal, and give them 120 days to complete their obligations.
  - b. Mr. Rusnak made a motion to approve the resolution prepared by Mr. VanEmbden. Comm. Geiger seconded the motion.

- c. The resolution was approved with 6 Aye votes (Geiger, Brown, MacKenzie, Rusnak, Remy, Wallace). Dr. Farrell abstained from the vote.

## 2. **Lot Coverage Awareness Subcommittee Proposal: HVAC**

- a. Mr. Wallace stated that the board has had several discussions on the new HVAC proposal and summarized the changes that the LCA Subcommittee has made. He stated in terms of the proposal we are allowing the equipment to be any place in the backyard outside of the setbacks, added a non-vegetative option for screening and moved the noise standard up to 68 decibels instead of 65 decibels.
- b. Ms. Makenzie raised a question about slide 5 where it talks about the noise standard of 68 decibels. Then it says, however, not all heat pumps, or air conditioners would meet this standard. The question is, is the 68 decibels just a standard for the generators?
- c. Mr. Wallace replied that the code will say 68 decibels, and it will apply to generators, AC units and heat pumps as well.
- d. Mr. Wallace read the proposed code; To minimize noise impacts on all properties from mechanical equipment, any such equipment, including heating ventilation, air conditioning, and heat pumps excluding individual wall, window A/C units, and whole house generators installed for existing or new structures in any zoning district must meet the following requirements: equipment shall not be located in the front yard; equipment shall be placed at the rear of the house, at least 15 feet from any public right of way and outside of the required setbacks as defined in this code. If at the Zoning Officer's discretion, placement in a side yard is permitted to best minimize noise impact, it also must be located no closer than 60 feet from the street in front of the house, it also must be screened from view, using vegetation, fencing, or decorative screening to a minimum height of 4 feet above ground level, to minimize visibility from all streets and side yard properties. All equipment must have a manufacturer rating below 68 decibels.
- e. After discussion, there was a suggestion to modify the last line to include at or below a noise rating of 68 decibels. Mr. Remy asked who would enforce this regulation. Mr. Wallace stated that the Zoning Officer would be responsible for enforcing the proposed code.
- f. Mr. Wallace wanted to comment on a point that Ed Barnhart raised in his letter that was previously circulated to the board. Mr. Barnhart is concerned that this proposal would not allow someone to put a HVAC unit on the roof of the house or somewhere within the footprint of the structure. Mr. Wallace does not interpret it that way but acknowledges that it could be interpreted that way. Mr. Wallace suggested softening the wording to the proposed code and adding "if outside the footprint of the of the structure to the front of point B.
- g. After more discussion by the board, the proposed code would read as follows: 150-12i. To minimize noise impacts on all properties from mechanical equipment, any such equipment-including heating, ventilation, air conditioning units, heat pumps (excluding individual wall/window A/C units), and whole-house generators-installed for existing or new structures in any zoning district must meet the following requirements: a) Equipment may not be located in the front yard; b) if outside the footprint of the structure, equipment shall be placed at the rear of the house, at least 15 feet from any public right-of-way and outside of the required setbacks as defined in this code. If, at the Zoning Officer's discretion, placement in a side yard is permitted to best minimize noise impacts: c) it also must be located no closer than 60 feet from the street in front of the house; d) it also must be screened from view using vegetation, fencing, or decorative screening to a minimum height of 4 feet above ground level, to minimize visibility from all streets and side yard properties. All equipment must have a manufacturer noise rating at or below 68 decibels.
- h. Mr. Rusnak made a motion to recommend the proposal to the Commissioners. Ms. MacKenzie seconded the motion.

- i. The proposal was approved. All present voted Aye. (Geiger, Brown Farrell, MacKenzie, Remy, Rusnak, Wallace)

### 3. **Lot Coverage Awareness Proposal: Pergolas**

- a. Mr. Remy gave an overview of pergolas in the code. He stated that pergolas are only defined in the zoning code under “arbor/trellis/pergolas” as a type of construction, a term not otherwise defined. There’s ambiguity about how pergolas affect lot coverage and floor area ratio (FAR) and Zoning interpretations vary, especially regarding whether vegetative pergolas count towards the 60% vegetation requirements.
- b. Mr. Remy stated that some of the issues identified are: there is no formal rule on how pergolas contribute to lot coverage or FAR.; some pergolas have closable roofs and are raising questions about classifications; and increased pergola usage may reduce the actual green space by allowing non-vegetative development elsewhere on the property.
- c. Mr. Remy stated that some key considerations are: arbor/trellis structures (less than 20 sq ft) should be treated separately from pergolas; vegetative pergolas might promote natural surfaces; defining pergolas as “structures” would subject them to stricter zoning rules; new code must be clear for easy enforcement and allow grandfathering of existing structures.
- d. Mr. Remy stated that some proposal highlights are as follows; maintain pergolas as “construction” distinguishable from arbor/trellis and from structures with a closable roof; define “free standing” as 2+ feet from any other structure; others are attached; prohibit pergolas in required lot setbacks; clarify pergolas impact on lot coverage and FAR; attached pergolas; over organic material: 50% credit as vegetation, no FAR impact; over hardscape: 100% counts as part of the structure, 50 % counts towards FAR; free-standing pergolas; over organic: 50 % credit as vegetation, no FAR impact; over hardscape: 50% counts as part of the structure, 50% counts toward FAR.
- e. Mr. Remy stated that the overall goal is to introduce clear and enforceable standards to regulate pergolas, balancing aesthetic use with zoning integrity and preservation of green space.
- f. Ms. MacKenzie questioned the difference between the lot coverage treatment for cement/hardscape between attached pergolas and free-standing pergolas.
- g. Mr. Remy responded that he thinks they are trying to identify that if it's attached, it's part of the home or part of the structure and it’s not separate. That's why they said a freestanding pergola would be required to be 2 feet away from the structure.
- h. Mr. Wallace added that the notion is that these pergolas are the beginnings of porches, and they are morphing into bigger houses, in both a visual and a usable way. If it’s more than 2 feet away from the house, it can’t become part of the house.
- i. Mr. Remy also stated that the other thing they’re trying to identify was the fact that if you put a roof on a pergola, it is no longer considered a pergola, it would be considered a structure and there would be other codes that apply.
- j. Ms. Geiger suggested adding “if free standing” to the proposed definition of pergolas. The definition would read as follows: Pergola shall mean an attached or freestanding construction, including overhead members, and which less than 50% enclosed in each plane and is used for decorative purposes or growing certain plants. Arbor/trellis is a similar construction but less than 20 sq. ft. in area. A free-standing pergola is located 2 or more feet from another structure and is affixed to the ground to prevent unwanted movement. A construction with a closeable roof is not considered a pergola/arbor/trellis and is considered an accessory structure. If free standing, it shall be treated as an accessory structure.
- k. Ms. Geiger asked what the board sees as the outcome of this updated code. Mr. Brown responded that there will be improved standards and by having more definitions, there will be less potential for abuse.

- l. After further discussion the proposed addition of text saying free-standing pergolas would be treated as structures (the last sentence in j above) was removed. And the definition reverted to that proposed in the LCA materials.
- m. Mr. Rusnak made a motion to accept the modified code, as described in the LCA proposal, and refer the modifications to the Commissioners for their review and approval. Dr. Farrell seconded the motion.
- n. All present voted Aye. (Geiger, Brown Farrell, MacKenzie, Remy, Rusnak, Wallace)
4. **Subcommittee Updates:**
  - a. **Completeness Committee:** Mr. Brown stated that there haven't been any new applications that have come in.
  - b. **Lot Coverage Awareness Subcommittee:** Mr. Brown stated that they are working on several topics to present at a future meeting.
  - c. **CCRHVA:** Mr. Brown stated that the team continues to meet regularly. They are in a fairly intensive homework phase where they are working through generating a lot of material that will be useful and is required for the climate change related hazard vulnerability assessment. Once that material comes together, he will give a more substantive update to the Board.
5. **Any and all pending matters:**
  - a. Commissioner Geiger mentioned at the last Commissioner's meeting, harmonization of the tree ordinance and landscaping ordinance was discussed. The decision was made to modify the landscape ordinance in order to harmonize with the tree ordinance.
  - b. Mr. Brown stated that at our last meeting the county had drafted its response to the State on collected input from the municipalities in Cape May County about the State Development and Redevelopment plan proposal. At that time, we had reviewed the draft and suggested one small change in a checkbox related to Cape May Point. The final version of the county response came out on the 28th and was due to be submitted to the State on May 30<sup>th</sup>. He did check that our suggested correction in the check box about the green team was made and he did not see any other unusual changes in the county response. The plan will now percolate between the counties and State and by August or the Fall, the State will then make any final changes to the plan.
6. **Public Comment:**
  - a. Public comment was opened at 7:26pm on a motion from Mr. Remy and a second from Mr. Wallace.
  - b. Sandy Allison from Alexander Ave. stated she loves what the board is doing with the pergola. Her concern is something that's popping up now, something called social hubs in backyards, and these social hubs are covering up a lot of the open space on properties. Most of these are another outside permanent room. They start with grills and stoves, fire pits, pizza ovens, refrigerators, outside TVs, heating towers and furniture that stays there. It's almost like another extension of the house living area. She's seeing by the time you get this pergola out there, and then you spread this out, and even with the outdoor carpets and so forth, you've covered up a lot of the space, and there's no regulation. She's wondering if that's something that down the road that the LCA will consider looking into. Ms. Allison also wanted to note that she is impressed with how the board is running, and how professional the entire membership is.
  - c. Public comment was closed at 7:33pm on a motion from Commissioner Geiger and a second from Dr. Farrell.

#### **Adjournment**

They meeting was adjourned at 7:33pm on a motion from Mr. Rusnak and a second from Ms. MacKenzie. All present voted Aye.

Respectfully Submitted by:  
Kate Dunn  
Board Secretary  
Approved by Board 08/19/2025