

BOROUGH OF CAPE MAY POINT

Planning Board

Final Meeting Minutes

Tuesday, February 17, 2026 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, Ms. MacKenzie, Mr. Wallace, Ms. Hobby, Ms. Shufelt, Mr. Murphy

Absent: Ms. Shaw, Dr. Farrell, 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 V3 draft minutes for January 20, 2026 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 January 20, 2026 were approved on a motion from Mr. Murphy and a second from Mr. Remy. All present were in favor.

Business

1. SR PB 2026-01: Affordable Housing Ordinance and Consistency with Housing Element and Fair Share Plan of Master Plan

- a. Mr. Brown stated that last year we updated our Housing Element and Fair Share Plan. With the support of the Clarke Caton Hintz firm and Mr. Harrison's help, that was the portion of the Master Plan that we updated in order to stay on track with what was happening across the state with the Fair Share Housing Center which eventually, with the court's actions, replaced COAH. There was a series of filings after the Planning Board last talked about this and the Fair Share Housing Corporation was appealing or challenging various communities in order to seek further modifications. What we're dealing with today is the Commissioners have introduced two changes in ordinance that fine-tune our code in relation to what the court has deemed appropriate to do and which is reflected primarily in a consent order that is an agreement between the Fair Share Housing Center and Cape May Point Borough. That agreement was filed on January 20th, 2026.

- b. Mr. Harrison of Clarke Caton Hintz gave a brief background on how we got to this point in the Affordable Housing compliance process.
- c. Mr. Harrison stated that the Fair Housing Act was amended in 2024, which set a timeline for compliance within the Fourth Round which includes the years 2025 through 2035. That timeline set by the Amendment for Housing Act included adoption of a Housing Element and Fair Share Plan, by June, which the Borough did do in May of 2025. Now, we are at a point where every municipality has to adopt all their implementing ordinances of their housing plan by March 15th, 2026. Failure to do that would mean loss of immunity of the Borough from Builder's remedy litigation, and loss of the ability to zone effectively.
- d. Mr. Harrison stated the Board adopted a Fourth-Round Housing Element and Fair Share Plan as part of its Master Plan back in May of 2025, and that set the stage for these ordinances. At the time, we were waiting for new rules from the state that were required by the amended Housing Act and those rules are known as the Uniform Housing Affordability Controls, or UHAC which were codified back in December of 2025. Now that the rules are codified, Clarke Caton Hintz have prepared the ordinances that have been introduced by the Board of Commissioners and now the ordinances are here so that the Planning Board can review those ordinances for consistency with that adopted Housing Element and Fair Share Plan of the Master Plan.
- e. Mr. Harrison stated that this Affordable Housing Ordinance is a repeal and replacement of the Borough's existing Third Round affordable housing ordinance. This updated ordinance is based on a model prepared by the Affordable Housing Professionals of New Jersey, or AHPNJ. It contains some specific provisions for Cape May Point that were added in or included some language that was carried forward from that prior ordinance from the Third Round. This Affordable Housing Ordinance is primarily administrative but it's tangentially related to land use and development in the Borough because it deals with Affordable Housing.
- f. Mr. Harrison stated that the main changes from the prior ordinance for the Third Round that are in this ordinance include that it complies with the 2024 Amended Housing Act, as well as the new rules that he mentioned with regard to spending plans, unit and trust fund monitoring, the abolition of COAH and its replacement with the Affordable Housing Dispute Resolution Program, which is a court function. This ordinance also contains some revised definitions and some changes that would apply to new development or new creation of affordable housing units, or the extension of existing controls on existing affordable housing units.
- g. Mr. Harrison went back to the adopted Fourth Round Housing Element and Fair Share Plan. The Borough has prepared what is known as a vacant land adjustment. It has adjusted downward its affordable housing obligations by demonstrating its lack of vacant and developable land. With the adoption of this ordinance, it meets the new rule changes, but effectively, it's business as usual in terms of the administration and creation of affordable housing units in Cape May Point. We stated in the adopted Housing Element and Fair Share plan that we were waiting on these rules in order to prepare these ordinances, but the Housing Plan does say that these ordinances will be prepared. We're directly consistent with the Housing Element and Fair Share Plan because these ordinances before you tonight implement the Housing Plan.
- h. Mr. Harrison added that the 2017 Master Plan Reexamination Report includes some recommendations related to affordable housing. Those recommendations include: maintain the character, density, and scale of existing residential neighborhoods, address the provision of affordable housing through compliance mechanisms that are appropriate for and consistent with the existing character of neighborhoods, streets, and public spaces, as well as continue to pursue a judgment of compliance and repose through the declaratory judgment process in the Superior Court. Effectively, what the Borough's 2017 Master Plan Reexamination states is that the Borough will continue to go through this program and process that the state has set up through the courts. He also added that this housing ordinance does not conflict with the zoning code. As he stated earlier, it's primarily administrative rather than about land use regulation.

- i. Mr. Brown confirmed that the vacant land adjustment has not changed since the last time the Board talked about it.
- j. Mr. Harrison stated that after the Borough adopted the Housing Element and Fair Share Plan, there was a window established by the law where challengers could file a challenge with the courts, and Cape May Point technically received a challenge from the Fair Share Housing Center. The Fair Share Housing Center was looking for some additional information that was provided to them and the consent order was prepared as an agreement, stating that the Borough has provided the information requested and will adopt these ordinances in compliance with the amended Housing Act.
- k. Mr. Brown confirmed that with the vacant land adjustment the realistic development potential is zero. Mr. Harrison added that the outcome of the vacant land adjustment has left the Borough with what is known as unmet need, which is a categorization of the affordable housing obligation that requires the municipality to provide an opportunity for potential redevelopment, in which the Borough already had those mechanisms in place. You have the accessory apartment program that permits, any, single-family homeowner, with sufficient space on their property to develop a smaller, single-family unit for the purposes of affordable housing, subject to the regulations that the Borough already has established.
- l. Mr. Brown stated there was some discussion whether the Fair Share Housing Corporation was going to challenge the utility or definition of RDP. He asked Mr. Harrison if that has happened. Mr. Harrison stated that has not happened and added that the consent order between the municipality and fair share that has been filed with the courts is indicative that the Borough does not have any issue with the Fair Share Housing Center in terms of RDP.
- m. Mr. Harrison stated that the major changes with the amended accessory apartment ordinance that the Borough already adopted are that, we've removed references to COAH, which is now abolished, and we've replaced those references with citations to the rules. The new rules under UHAC, or the Uniform Housing Affordability Controls, now require a minimum unit size for all affordable housing units, so we have referenced that in the Borough's Accessory Apartment Ordinance, which previously required a minimum of 300 square feet per unit. The new rules have a tiered requirement, so for studio units, that would be a minimum of 550 square feet, for one-bedroom units, it would be 600 square feet, and for two-bedroom units, it would be 850 square feet. Those are state rules and it would be difficult to have rules that went against that for affordable housing units. The ordinance before you does not propose any bulk zoning changes, no changes in lot coverage, no changes in setbacks or anything. It's if you want to create an accessory apartment unit on your property, it has to be the certain size set by the state.
- n. Comm. Geiger asked if there were next steps in the process. Mr. Harrison replied that where we're at right now is the Planning Board is reviewing these ordinances for consistency with the master plan, and you can also recommend any changes for the Board of Commissioners ahead of their adoption of these ordinances at their March 10th meeting. Within 48 hours of adoption of these ordinances, all of those documents have to be filed with the courts to demonstrate that the Borough is meeting the terms of the consent order. Then, the program will grant the Borough compliance for the Fourth Round.
- o. Mr. Harrison confirmed that the unmet need of 5 is from the fourth round, so the Borough has a cumulative unmet need since the creation of the Fair Housing Act of 75 total.
- p. There was a question about unmet need. Mr. Harrison explained that for each round of Affordable Housing, the Borough has a number of what is known as prospective need, and that is the obligation to build new affordable housing units. The vacant land adjustment was made, in which the Borough demonstrated that it doesn't have sufficient vacant land to provide that number of new affordable units, so that number has been reduced or re-characterized to what is known as unmet need. The unmet need of 5 is subject to different requirements and effectively, the Borough is really only required to provide the opportunity for those 5 units from the Fourth

Round to be created. What was established in the Housing Element and Fair Share Plan is that the Borough already has a mandatory set-aside ordinance, it already has the accessory apartment ordinance, and it collects development fees to build its affordable housing trust fund to satisfy its unmet need.

- q. Mr. Rusnak made a motion to approve the resolution. Mr. Remy seconded the motion.
- r. The resolution was approved with 9 Aye votes. (Geiger, Brown, MacKenzie, Murphy, Remy, Rusnak, Wallace, Hobdy, Shufelt)

2. SR PB 2026-02-Ordinance 05-2026-An Ordinance Amending Chapter 150 Zoning of the Code of the Borough of Cape May Point-Ramps/Asymmetric Houses

- a. Comm. Geiger stated that this amended ordinance relates to the recommended changes that the Planning Board sent to the Commissioners for review in regards to asymmetric houses and ramps. She stated that what the Commissioner's introduced was the proposal that was elevated to the Commissioners by the Planning Board. There were no modifications.
- b. Mr. Brown stated that at the time that we discussed ramps and asymmetric houses, we did refer back to the Master Plan and that the changes were consistent with the Master Plan. From his view, he thinks because we had introduced them ourselves and found them at the time to be consistent with Master Plan, he's not seeing anything to change his opinion of that.
- c. Ms. Shufelt asked if the ramps had to be minimum of 36 inches wide even if the person did not need a wheelchair. Mr. Remy replied that we focused on more was the ADA requirements of the ramps, and what their dimensions had to be, and also the elevation and railings. Mr. Brown stated that the actual code language references to the Uniform Construction Code, which is the connection to the ADA, because the New Jersey Uniform Construction Code requires ADA compliance. He doesn't believe that our proposal and what the Commissioners have introduced are making any changes to the temporary ramps that we were talking about. The clarifications we were making were clarifications about permanent ramps. There's nothing that this ordinance introduces that changes the posture and position of Cape May Point with regard to the temporary ramps. Secondly, Temporary ramps are triggered by a doctor's note, and the scenario Ms. Shufelt described talks about a doctor's note of which the Zoning Officer would then use that as the catalyst to allow a temporary ramp. Third, the point she is raising is not something that would necessarily derail what we're talking about tonight. If a unique scenario like that were to be inconsistent with the uniform Construction Code, meaning a narrower ramp, the ability to come to the Planning Board and get a variance for that temporary ramp and have it narrower is clearly a mechanism that still exists, even if we were to introduce and pass what the Commissioners proposed.
- d. Ms. Shufelt asked why a stoop/stair could be in the setbacks versus why a ramp couldn't be in the setbacks and why they are treated differently. Mr. Brown stated that permanent ramps would have to be outside the setback but a variance could be applied for if necessary. Mr. Wallace stated that the stoop and stairs would have to be outside the setbacks as well and are included in the lot coverage calculations.
- e. Public comment was opened at 7:15pm on a motion from Mr. Remy and a second from Comm. Geiger.
- f. Trish Kennedy spoke about lack of transparency and difficulty in finding information on the Borough website. Mr. Brown responded that agenda was posted to the website and also posted on the bulletin board in Borough Hall. He stated that the ordinance we are looking at tonight are ordinances that we are reacting to that were introduced in a previous Commissioner's meeting and were made available to the public.
- g. Public comment was closed at 7:23pm on a motion from Mr. Murphy and a second from Mr. Remy.

- h. Mr. Rusnak made a motion to approve the resolution that was prepared by Mr. VanEmbden finding the new ordinance proposal is consistent with the Master Plan. Ms. MacKenzie seconded the motion.
- i. The resolution was approved with 8 Aye votes. (Geiger, Brown, MacKenzie, Murphy, Remy, Rusnak, Wallace, Hobdy. Ms. Shufelt abstained from the vote.

3. **Joint Insurance Fund-Refresher Training on Land Use Liability**

- a. Mr. VanEmbden stated that the JIF wants to remind you that you're sitting as a quasi-judicial function when hearing an application. You have to have impartiality, and you have to have the opportunity to hear everybody fairly and equally, and then make a decision. Very seldom do members of land use boards get sued but there could be a circumstance where you could have liability if your behavior is so egregious and so unfair as to expose you to a much higher standard of personal liability. Be judicious, be calm, be careful, and, and talk about your integrated findings that you have made from what happens during the presentation, and explain your thinking if there's any question about it.
- b. Mr. VanEmbden explained there are immunities for land use board members but as he explained that very egregious circumstances will supersede those immunities. The real-life lessons talk about that it is common for the town to be held liable, even when the board members are not. That doesn't mean because you have an individual liability, you can't spout off about things in a board meeting without consequence, because the consequence will come back to impact your community. There is something called fee shifting. Fee shifting is when the court finds that you and your township did wrong, and they shift the responsibility for paying for the litigation to the township. If you have a question and you're not certain how you have to go, whether that you should recuse, whether there's a conflict, or whether you're thinking this through right, please reach out and ask.
- c. Mr. VanEmbden stated that the next page of the JIF Refresher booklet talks about inverse condemnation cases. That's the reverse of what's the result if a township, municipality, borough, renders a property not usable at all, or not usable for how it's zoned. It's inversely condemning the property. It's saying the result of our ruling is that you can't use your property, and therefore, the owner of the property can come before the court and ask for an award of damages, just as if the township had intentionally condemned the property. The ruling can find that there was inverse condemnation or the implication of condemnation was the result of the action. One of the most significant and commonly litigated issue is the religious cases, where somebody wants to build a religious facility, and there's an opposition to it. There's an opportunity there for the fee shifting issue and the opportunity for finding of liability and extensive damages. It's happened a lot in Ocean County and, in the central and northern New Jersey.
- d. Mr. VanEmbden stated there's a section called Selective Enforcement. You can't enforce the rules for or against the people you don't like, in favor of the people you do like. You have to uniformly apply the rules. Then the booklet talks about land use board meeting conduct. This board is well maintained and managed and he doesn't think that there's any conduct issue. He stated that it's a good idea to take a look at a property and become familiar with it before the application is heard but it would have to be done in stages so that there is no violation of the OPMA. If you run into trouble with litigation, the municipality can defend you but they can't defend you against punitive damages. You can't poll people on Facebook, and you can't voice your prejudices or your improper thinking. If you're going to be on the board, you have to reconcile yourself to what the law is.

4. **Subcommittee Updates:**

- a. **Completeness Committee:** Mr. Murphy stated that there is nothing new on the one application in the pipeline and there are no others in the pipeline at this time.
- b. **Lot Coverage Awareness Subcommittee:** Mr. Wallace believes there will be some topics for presentation in the next couple of meetings.

5. Any and all pending matters:

- a. None

Board Information:

- c. Mr. Brown stated that if anyone has any suggestions on how to improve what we are doing, he is happy to accept them.

Public Comment:

- a. Public comment was opened at 7:42pm on a motion from Mr. Remy and a second from Mr. Murphy.
- b. Trish Kennedy doesn't believe the deficiency to keep information from circulating has been addressed. She noted that she would be sending a video so that everyone would have the opportunity to look at it.
- c. Public comment was closed at 7:45pm on a motion from Mr. Rusnak and a second from Comm. Geiger

Adjournment

They meeting was adjourned at 7:45pm on a motion from Mr. Rusnak and a second from Mr. Murphy. All present voted Aye.

Respectfully Submitted by:

Kate Dunn

Board Secretary

Approved by Board 04/21/2026