

**OCEANPORT PLANNING BOARD
MINUTES
August 9, 2016**

Chairman Widdis called the meeting to order at 7:30 p.m. and gave the Statement of Compliance with the Open Public Meetings Act: "Adequate notice of this meeting has been provided by notice to the Asbury Park Press and The Link News on January 15, 2016, publication on January 21, 2016 and by the posting of same on the municipal bulletin board and Borough Web Site."

Chairman Widdis led the flag salute.

MEMBERS PRESENT: Mr. Wible, Mr. Foster, Councilwoman Cooper, Mr. Kleiberg, Mr. Kahle, Mr. Savarese, Mr. Proto, Mr. Whitson, Mr. Widdis

MEMBERS ABSENT: Mr. Sullivan, Mr. Fichter

OFFICIALS PRESENT: Jeanne Smith, Board Secretary, Rick DeNoia, Esq., Board Attorney, Board Engineer/Planner William White

BOARD BUSINESS:

1. Minutes of the meeting of July 12, 2016 were approved with correction to date of meeting on Page 1 on a motion from Mr. Whitson and a second from Mr. Foster and approved by the Board.
2. Correspondence - Ms. Smith advised the Board concerning an application filed to the NJDEP on behalf of 275 Port Au Peck Avenue seeking a Letter of Interpretation of freshwater wetlands on the property which was available for their review. Ms. Smith further advised of receipt of the County's draft Master Plan with a public hearing to be held on September 19, 2016. Chairman Widdis asked that Ms. Smith email the Board with the specifics of the hearing for those who may attend. Mr. Wible stated that he attended the first meeting and briefly described the presentation.
3. Mandatory Training – Ms. Smith advised that some members who were to attend the course in the spring had not been able to attend and that an arrangement had been made to apply the fees to a fall course and advised of the date for the Monmouth County location. Chairman Widdis asked that those members requiring the training be notified by email of the new course date specifics.
4. Referral from Governing Body – Proposed Amendment to Zoning Ordinance #967. The recommendation from the Planning Board to the Governing body is needed for the September 15, 2016 Mayor and Council meeting. Mr. White explained that the Council is seeking to allow up to six chickens (no roosters) in appropriate sized parcel. Each chicken requires 351 sq. feet of rear yard area. He stated there are requirements for education on how to care for chicken and what are prohibited activities. Councilwoman Cooper stated the idea came from the Sustainable New Jersey Committee as part of a new movement similar to community gardening. She stated the Council reviewed ordinances from other municipalities. Mr. Kleiberg asked who would handle complaints. Chairman Widdis asked that Mr. Kleiberg postpone that question and then asked if Mr. Savarese had any questions. Both responded they did not. Mr. Kleiberg again asked who would be responsible for compliance. Councilwoman Cooper replied that the zoning office would be. Mr. Kleiberg asked who would be responsible for the buildings and if it would go through approvals by the building department. Mr. White responded that the owner would be responsible for fencing, using the right materials. Councilwoman Cooper responded that the chicken will be fenced in, not free roaming. She restated the requirement of 351 sq. feet per hen. The chickens will be banded. Mr. Whitson expressed surprise at the idea

of allowing chicken. Councilwoman Cooper stated that there are currently chickens in the Borough. Mr. Proto also asked about enforcement and if the police would be called. Councilwoman Cooper replied that any borough employee is able to take a loose chicken into custody. Chairman Widdis quoted the exact language from the proposed ordinance. Councilwoman Cooper stated the proposed ordinance prohibits slaughtering.

Mr. Wible asked about the minimum lot size. Councilwoman Cooper explained that it was 351 sq. feet per hen. Mr. Wible requested confirmation that the structure is required to be 20 feet away from any doors and windows and that a coop would be an accessory structure and therefore need to comply with other accessory setbacks. Councilwoman Cooper replied that there is a 100 foot setback from the property line. Ms. Smith stated that anything built in Monmouth Park for animals has to be 100 feet from property line and it doesn't apply to this ordinance. Mr. Wible asked what the setback for the structure would be from his property line. Chairman Widdis asked if the structure would be treated as an accessory. Ms. Smith stated that the setbacks would differ depending on the zone. However, because of the permitted size of the structure, certain size structures do not fall under zoning. Mr. White stated that a chicken coop would be an accessory structure and be required to comply with setbacks in the zone. Mr. Wible stated that accessory structure setbacks would be applicable. Chairman Widdis confirmed that. Mr. Wible asked if that condition was clear in the proposed ordinance. Councilwoman Cooper stated she would make that known to the Council. Chairman Widdis stated the Board would provide her with a list. Mr. Wible expressed a concern regarding base flood elevations and flooding, which is not applied to accessory structures. He asked what would happen if an area flooded where the chickens were housed. Chairman Widdis agreed there was a concern and said it was a rhetorical question and how does the Borough deal with it. Mr. White stated the structure would not be covered with FEMA and flood insurance. Mr. Wible asked if people would take their chickens into their house, such as they would with a cat or a dog. The response was they could. Mr. Wible asked if the existing zoning ordinance permit rabbits and was advised that it does. Mr. Kleiberg responded that the current ordinance prohibits reptiles, poultry, swine, horses, goats, cows or other large mammals. Mr. Wible advised that he read the Master Plan and found no mention of dogs, cats, livestock or horses. He is unsure if the change in the ordinance fits with the future of Oceanport. In summary, he said that if the ordinance is changed, things such as accessory, setback, and supply should be made clear.

Chairman Widdis stated there were no definitions in the proposed ordinance for fowl or slaughtering. He expressed concern about chicken coops on the riverside or houses situated closely together and that there will be complaints. He agreed setbacks will be required. He suggested some type of buffer should be required so neighbors do not have to view the chickens. Councilwoman Cooper asked whether there were those types of requirements for dogs. Chairman Widdis responded that dogs are usually kept inside or on leashes. Councilwoman Cooper asked if the concerns were more about fitting with the Master Plan or the monitoring of the chickens. Chairman Widdis expressed concern about runoff from the chickens. Mr. Whitson discussed bird flu. Councilwoman Cooper stated that there is documentation that avian flu is not a concern. Mr. Wible commented that there was a presentation at the Council meeting where an expert stated bird flu was not a consideration with regard to backyard chickens. He added that she spoke about salmonella and the amount of waste produced by a chicken was a tenth of that of a 100 pound dog.

Chairman Widdis raised a concern about the visibility of the chicken. Mr. Wible stated the definition of poultry was chickens, turkeys, ducks and geese. He agreed with Chairman Widdis that definitions were important and suggested that the word chicken should be specifically stated in the proposed ordinance. Mr. Foster asked which ordinances the Council looked at in order to draft this proposal.

Shannon Sheffling, 114 Garden Road, Shrewsbury, was the expert who made the presentation to the Council, was in the audience and was sworn in. She explained that nearby towns are

leaning toward the “green movement”. She stated eggs from backyard chickens are healthier than those in the grocery store. Six hens produce enough eggs for a family of five for an entire season, including the winter. She understands people’s concerns regarding chickens. That was one of the reasons the ordinance contains language to require a coop, a run or some sort of moving fence, but not free range. She stated the CDC has no reported cases of avian flu in the U.S. She discussed salmonella and stated it was a food sanitation issue. There was discussion between Ms. Sheffling and Board members regarding the increase of chickens and its effect of an increase in avian flu cases. Ms. Sheffling stated it’s important to maintain the health of the chickens. There are no mandatory vaccines for chickens, but most animal hospitals would be able to administer any vaccine an owner wanted.

Chairman Widdis stated the proposed ordinance needs modification. Ms. Sheffling stated the proposed ordinance was based on Oceanport’s current ordinance. Current ordinances such as the noise ordinance were taken into consideration. Chairman Widdis asked about the different types of chickens, such as those that fly or sit in trees. Ms. Sheffling explained that the chickens can have their wings clipped as a preventive measure or simply keep them enclosed, which is stated in the proposed ordinance. Ms. Sheffling explained there was limited language regarding materials so that individuals could have more flexibility in building their structures, but it could be modified to include such language. There was discussion regarding how many eggs could be produced. Chairman Widdis again mentioned the need for definition of slaughtering. Mr. Proto asked what the risk would be from rodents. Ms. Sheffling stated the risk would arise from chicken feed, but the proposed ordinance requires tight fitting metal containers. The education portion addresses storage of feed. There was additional discussion regarding neighbors’ complaints. There was discussion regarding the need to heat the coops.

Mr. Wible asked whether this “green movement” was going to progress past chickens and how it would affect overall land use. Ms. Sheffling stated that other towns with larger properties have allowed goats for milk, but this ordinance is not intended to move in that direction. Mr. Wible stated that some municipalities have required coops to be close to the owner’s residence as a way to enforce cleanliness. He asked what the reason was for the proposed setback. Ms. Sheffling stated the 20 foot distance was included because of the current shed ordinance. Regarding cleanliness, the ordinance requires a deep litter bedding system be cleaned every three months as opposed to once a year.

Chairman Widdis stated that the suggested amendments need to be made and it needs to be presented to the Planning Board again. Ms. Smith advised that the next Planning Board meeting occurs after the 35 day review expires. Chairman Widdis reiterated that changes need to be made before the Board will recommend that Council approve it.

Mr. Foster advised that his daughter, who lives in Howell, has 6 chickens and a rooster. He stated the chickens are allowed in the house and are not as dirty as one might think. There are even diapers available for chickens.

Mr. DeNoia asked Ms. Smith what type of action the Council is looking for from the Planning Board. He expressed concern that the review period would lapse and the Board would not be able to get the changes it desired. Ms. Smith stated perhaps the Board should hold a special meeting and that the Board’s role is to determine whether the ordinance is consistent with the Master Plan. Mr. Wible asked how the Board could determine consistency with the Master Plan when the Master Plan is silent regarding chicken and that land use law would then be applicable to the ordinance. Chairman Widdis stated that the Planner needed to review the ordinance. Mr. DeNoia stated there were enough concerns that the Council should extend the time allowed for response from the Planning Board. Mr. DeNoia suggested sending the Planning Board minutes to the Governing Body to review the Board’s comments. He stated the Council does not have to act absent input because they didn’t get it within 35 days. Mr. Wible stated the Borough is

conducting public hearings for amendments to the Master Plan and believes this topic should be incorporated in those hearings. Mr. DeNoia stated that the Planning Board does not make ordinances, the Governing Body does. He agreed that the topic should be considered. Chairman Widdis stated the proposed ordinance should be reviewed by the individuals working on the Master Plan. Public comments should be made at the Council meeting. Minutes of this meeting will be provided to the Mayor and Council.

OLD BUSINESS:

- 5. PB2016-08 Kelly, Michael CARRIED to September 13, 2016
7 Main Street
Block 110, Lot 24
Request for Bulk Variances

Ms. Smith advised that the Applicant's engineer was unable to complete the requested plan amendments in time for the 10-day on file period and therefore Attorney Jennifer Krimko had requested that their matter be carried to the next available meeting. As there were no objections, the Board approved the application be carried to the September 13, 2016 meeting with no additional notice required.

NEW BUSINESS:

- 6. PB2016-09 O'Neill, Michael
21 Gooseneck Point Road
Block 74, Lot 24
Request for Bulk Variances

- A-1 Table of Zoning Requirements and Proposed, prepared by Michael O'Neill, undated.**
- A-2 Plans Consisting of 3 Sheets entitled, "Site Plan, New Construction O'Neill Residence, 21 Gooseneck Point Road, Block 74, Lot 24", as prepared by Jeremiah J. Regan, AIA, dated April 5, 2016.**
- A-3 Front Elevation Rendering, designed by Jeremiah J. Regan, undated.**
- A-4 Rear Elevation Rendering, designed by Jeremiah J. Regan, undated.**
- A-5 Floor Plans for First and Second Level, dated April 5, 2016**

Mr. DeNoia stated for the record service had been reviewed, was in order and the Board accepted jurisdiction.

Erik Anderson, Reardon Anderson, Attorney for the Applicant, presented and gave a brief history of the site and previous appearance before the Planning Board. The Board previously granted approval for new construction in 2013. The Applicant is requesting approval to reduce the size of the new construction on the lot.

The following individuals were sworn: Michael O'Neill, Applicant/Owner, and William White, Board Engineer/Planner. Mr. O'Neill testified that the proposed structure is a few hundred feet smaller than the previously approved plan. The setback from the water was formerly 50 feet and is now 55. The structure is a four bedroom home with an attached garage. Side variances improved by 3 feet and the height variance did not change. A pool was previously approved and will remain in the plans. Mr. DeNoia asked him to comment on impervious coverage and changes in ordinances. Mr. O'Neill testified that the impervious coverage ordinance was adopted after the plans were approved. So, the ordinance

changed, not the amount of impervious coverage. The impervious coverage will be 46.3% where 25% is permitted. Mr. O'Neill introduced **Exhibit A-1**, which outlined previous approvals and current application. The Applicant is requesting approvals for side and rear setbacks, building height and impervious coverage. Front yard setback was 64.95 to 65 feet. Side yard setback was 12.25 to 15.31 in the rear corner of the home due to the shape of the home. Aggregate for side yard setback is 35 foot minimum. The previous approval was 27.33, it is now 30.31. Rear yard setback is increased to 55.62 feet. Building height was at 37.32, the proposal is 37.3. The impervious coverage ordinance was not in effect in 2013, but the overall impervious coverage would be 46.3%. Chairman Widdis asked the Board for comments. Mr. White stated it comes down to two variances, impervious coverage and a retaining wall setback. Mr. Whitson asked if the loft above the garage would be living space. Mr. O'Neill stated it would not be an apartment. Mr. Foster asked for details about the retaining wall and expressed concern and water runoff. Mr. White discussed different options with Mr. Surmonte. Mr. Surmonte stated this property is lower than neighbors' and the clean water will get out to the river.

PUBLIC:

Chairman Widdis opened the meeting to the public for questions of this witness. As no one wished to be heard, Chairman Widdis closed that portion of the meeting.

Jeremiah J. Regan, Architect for the Applicant, was sworn in, presented qualifications and was accepted as an expert in architecture. He introduced **Exhibit A-2** which listed zoning data and required, existing and proposed, and also showed the site plan, which showed the footprint of the two story structure. It shows the location of the driveway, with a pre-existing curb cut. A terrace and pool are proposed in the rear. Previous violations for the dock have been resolved. He explained that the lot is undersized in width in both the front and more so in the rear and is an irregular lot. He testified there is no property available to make the lot conforming. There are existing retaining walls on either side of the property that belong to adjacent properties. Mr. Regan introduced **Exhibit A-3**, the proposed front elevation. He testified that the footprint of the proposed construction is almost the same as the previously approved building was. Mr. Regan introduced **Exhibit A-4**, the rear view elevation and which shows the existing bulkhead and neighbor's bulkhead and retaining wall. Mr. Regan discussed bulkheads and stated the side yard setback is 15.31 feet. He described the building as a two story seashore colonial, 4 bedrooms. Mr. Regan presented **Exhibit A-5**, floor plans for the first and second levels. He described the layout of the building, which includes a wraparound porch connecting to a garage with a loft above. Two of the upstairs bedrooms will have balconies overlooking the river. Chairman Widdis asked what the gross square footage would be. Mr. Regan advised the gross square footage is 4900 sq. feet, net square footage is 4664 sq. feet. Proposed height is 37 feet, 3 inches from the road, which meets the flood elevation requirements. The finished first floor will be about 6 ½ feet above the crown of the road. The BFE is 10 with a minimum of 2.4 above that for a total of 12.4. This proposes 12.71.

Chairman Widdis invited questions from members of the Board. Mr. Foster had questions regarding the retaining walls. Mr. Regan advised both retaining walls were on adjacent properties. Mr. White clarified that those are existing and the Applicant is proposing new retaining walls that will be 2 ½ feet off the property line. Mr. Foster asked what the height of the building would be. Mr. Regan replied it is 37 feet 3 inches from the crown of the road. Mr. Whitson wanted clarification regarding the garage. Mr. Regan replied it was an attached three car garage. Mr. Whitson commented that the Engineer's letter indicated called for a two car detached garage, but the plans have been changed to a three car garage. Mr. Wible asked what the intentions were regarding fencing around the pool. Mr. Regan replied that there will be some type of fencing or barrier as required, but material or height has not been determined. Councilwoman Cooper asked additional questions regarding the retaining walls. Mr. Regan replied the retaining walls are on the property line, which are the neighbors'. He stated that Mr. Surmonte will be regrading to achieve a positive pitch with drainage toward the river. Mr. White stated that if they exceed 2 ½ feet, a guard would be required. Chairman Widdis wanted more information on the fencing because the property is on the river and views of the river should not be blocked. Mr. O'Neill stated his neighbor has an open type fence and he would tie into that. Mr. White stated it could be different

materials, as long as it is code compliant with a self-closing gate and latches for the pool. Mr. Kahle asked what the purpose of the retaining walls on the left side. Mr. White replied that the neighboring properties are higher than the subject property. The variance he is requesting is for building the patio around the pool. Mr. Kahle and Mr. White discussed the need for retaining walls. Mr. Sullivan had questions about the impervious coverage. The Applicant is asking for 46.3%. He noted that there was a significant amount of green area. Mr. O'Neill explained that includes the footprint of the house, the front and rear porch, garage and driveway.

PUBLIC:

Chairman Widdis opened the meeting to the public for questions for this witness only. As no one from the public wished to be heard Chairman Widdis closed that portion of the hearing.

Mr. Anderson stated that was the conclusion of witness testimony on behalf of the Applicant. Chairman Widdis asked the Applicant to keep the lighting to a minimum, shine down and not affect the neighbors. Lighting for the garage should also be kept to a minimum so as not to adversely affect neighbors.

PUBLIC:

Chairman Widdis opened the meeting to the public for comments for this witness only. As no one from the public wished to be heard Chairman Widdis closed that portion of the hearing.

Mr. Foster commented in line with "dark skies", there are fixtures that can reduce light emissions.

Mr. Wible asked for clarification on which variances were being considered. Mr. White stated he framed it as an amended application and variances run with the land. Mr. DeNoia stated his agreement.

Chairman Widdis requested a motion. Mr. Wible made a motion to approve the application, to recognize the previous variances and grant an impervious coverage variance of 46.3% and a retaining wall setback from the property line of 2 ½ feet as to be verified by the Architect. Chairman Widdis stated it should be an amendment to the previous application. Mr. Wible made a motion to approve this as an amendment to the previous application, recognize the previous variances, adding the impervious coverage of 46.3% and a retaining wall setback from the property line of 2 ½ feet as to be verified by the Architect. Councilwoman Cooper seconded the motion. There was a clarification regarding the need for a height variance. The Clerk called roll:

AYES: Mr. Whitson, Mr. Wible, Mr. Foster, Councilwoman Cooper, Mr. Savarese, Mr. Kleiberg,
Mr. Kahle, Mr. Proto, Mr. Widdis

NAYS : None

ABSENT: Mr. Sullivan, Mr. Fichter

ABSTAIN: None

The Clerk stated the motion carried.

At 9:00 pm, the Board took a five minute recess. At 9:05 pm, the Board returned to regular session.

- 7. PB2016-10 Cartwright, Robert
425 River Street
Block 1, Lot 19
Request for Bulk Variances

A-1 Plot Plan/Variance Plan, prepared by DW Smith Associates, LLC, dated May 10, 2016

A-2 RREM Program Conditions

A-3 Revised Sheets 4 and 5 of Architectural Plans prepared by Moglino Architect, dated June 27, 2016 with Memo by Architect dated August 8, 2016 addressing Board Engineer's comments.

A-4 Architectural Plans prepared by Moglino Architect, dated June 11, 2015 (6 sheets)

Mr. Cartwright, Applicant/Owner, was sworn. Mr. DeNoia stated for the record service had been reviewed, was in order and the Board accepted jurisdiction. The following individuals were sworn: Joseph Lalka, of DW Smith, Applicant's Engineer; Alison Coffin, Professional Planner for the Applicant. Mr. Lalka stated his qualifications and was accepted as an expert in engineering.

Mr. Lalka gave a brief description of the proposal. The existing structure was damaged during Sandy. The Applicant is requesting to demolish the existing building and raise the proposed building out of the flood plain. He introduced **Exhibit A-1**, which shows a dual view of the existing conditions and the proposed conditions. The proposed structure is in approximately the same location and in the same footprint as required by RREM. Chairman Widdis asked for supporting documentation. Mr. Lalka introduced **Exhibit A-2**. The site contains pre-existing, non-conforming conditions, including side yard setback and front yard setback. Those setbacks will remain in order to comply with REEM. Chairman Widdis asked if Mr. Cartwright spoke with anyone at RREM to determine if the house could be moved. Mr. Cartwright replied that if he tried to move the house to the center of the property, other permits such as DEP and CAFRA would be required, in addition to the requirement that the house must be rebuilt in the same footprint. There was further discussion regarding moving the location of the house. If Mr. Cartwright chose to move the building from the current footprint, he would be ineligible for the RREM grant. Mr. Foster asked who filed the rule by permit. Mr. Lalka replied that it hasn't been filed and that if the building were moved to comply with setbacks, a new application with CAFRA would be required and would take months to complete. Mr. White stated he has some experience with RREM, but this is specific to this property. In addition, if the applicant has to go to CAFRA, he will miss the RREM deadline and lose the grant. Mr. DeNoia stated that the Applicant options are to rebuild in the same footprint or lose the RREM grant.

Mr. Lalka discussed the height of the building. He introduced **Exhibit A-3**. Mr. White stated it is a minor change in the application and provides clarification and proof that the plans comply with the Borough's half-story definition, meaning no more than 50% of the floor below as requested in his review letter. Mr. Lalka testified the plans exceed the limit by 1.4 sq. feet, but a closet can be reduced to resolve that problem. He noted that the building complies with height at the foundation, but not relative to the center line of the street. There was discussion regarding the crown of the road to the peak of the roof. Mr. Lalka testified the building was 36 ½ feet from the crown of the road where 35 is allowed. Mr. White asked what the ceiling heights were per story. Mr. Lalka stated the first floor to the top plate is 9 feet; second floor, 8 feet; third floor, 7 ½ feet. There was discussion regarding ceiling height. Chairman Widdis asked who prepared the architectural plan. Mr. Lalka replied that Lou Moglino of Holmdel prepared the plans. Mr. White added the date was June 27, 2016, comprised of 6 sheets. Mr. Lalka described the plans showing a 2 ½ story house, front/south elevation, porch, double peaked roof, shingled. Other prominent features are a second floor deck on the rear elevation and a pair of dormers from the upper elevation, shown on Sheet A-5. There will not be a garage. Three parking spaces are required for five bedroom housing, which are available in the front yard. There was discussion regarding the existing driveway. Mr. Lalka described the room layouts for each of the floors of the proposed dwelling. There was also discussion regarding which direction the front of the house would face and the reasoning for using a side entry.

Chairman Widdis asked the Board if they had any questions. Mr. Savarese asked Mr. White if the rear setback to the water remained the same if it would be a CAFRA by rule permit. Mr. White replied that if the square footage and distance from the water remained, it should be. Mr. Savarese stated that discussions should take place with RREM in order to allow moving the house. Mr. Kleiberg agreed that the house should move toward the marina. Mr. Foster also agreed. Mr. Whitson asked about the

Engineer's comment on the shed and how was it a hardship that required a variance. Mr. Lalka replied that it was a pre-existing condition that was not being altered. Mr. Whitson stated it should be corrected. Mr. Cartwright stated that the shed would be removed anyway. Mr. Whitson also expressed concern about revised plans and their availability for the public. Mr. Proto requested clarification on the third floor. He wanted to know if it was a habitable attic to which Mr. Lalka responded yes, it was 2 ½ story. Mr. White explained that if the closet is modified to reduce the square footage, that would be less than 1/3 of the floor below and then be considered a half story.

Mr. Wible addressing Mr. Whitson's concern about the revised plan and was the other concern on the house being centered on the lot and asked if the Board required these would they no longer qualify for the grant. Mr. Cartwright responded it would depend on how long it took to get done as deadline was 8 months away. There was discussion regarding the CAFRA by rule. Mr. Lalka stated that after meeting certain requirements, CAFRA is required to approve. Mr. DeNoia asked the Applicant if there is enough time before the next meeting to determine if the building can be moved. Mr. Lalka would have to deal with the DEP. Mr. Cartwright stated he had met with RREM and they advised the footprint could not be moved.

Alison Coffin, Professional Planner for Applicant, was sworn in and having been qualified previously by the Board was accepted as an expert in Planning. She stated there was no relief necessary for the side yard setback. If the proposed new stairs are removed, the building meets the required side yard setback. It does require a variance for the front yard setback, but the Applicant is proposing to stay at the current front yard setback. Chairman Widdis asked if there was a possibility to move the house back. Ms. Coffin stated there is no possibility for that under RREM. Mr. White stated there are different RREM programs. He stated it would be advantageous for him to speak to the Applicant's RREM advisor and get a direct answer and report back to the Board. Chairman Widdis stated the plans were piecemeal and difficult for the Board to follow. He expressed concerns that the revised sheets were not available for sufficient time for the public to review. Mr. Wible requested a list of the newly requested variances compared to the previous property. Ms. Coffin stated the existing property has a front yard setback of 17.9 feet where 30 feet is required. The proposed home is 17.9, which is a pre-existing variance that has not changed. The side yard setback is 10 feet, as it currently exists. It will be 10 feet if the stairs are eliminated. There is a non-conforming shed that is less 1 foot off the lot line, which will be removed. There is another shed located 2.06 feet on the other lot line which holds the pool equipment, which the Applicant would like to keep. It is a pre-existing non-conforming condition. A height variance is needed where 35 feet is required, the new structure will be 36 feet. Therefore, the height is the only new variance. Ms. Coffin asked the Board to consider that there is automatic variance relief available for Sandy damaged structures. The Applicant has the right to stay within the existing footprint. Chairman Widdis suggested the Applicant modify the plans to reflect removal of the stairs and shed. He also asked if there was sufficient space for the pool equipment because if he does, now would be the time to ask for it. Chairman Widdis stated the plans need to be cleaned up and be compliant. Mr. Proto asked if the new home would remain on the existing foundation so there would not be a need for the front yard setback. Ms. Coffin explained that there was legislation passed after Sandy that allows rebuilding within the existing footprint but at higher elevations, and automatically granted height variance relief.

PUBLIC:

Chairman Widdis opened the meeting to the public for questions or comments.

Roseann Letson, 37 Morris Place, stated the neighborhood is small and Mr. Cartwright notified everyone as required. Whether they had 10 days to review the plans or not, no one is present opposing the Applicant's plans. She strongly stated her support for the Applicant, who is trying to get back into his home after four years. She admonished the Board for its inaction.

Mary Schmidt, 429 River Street, also expressed her strong support for the Applicant, she being the next door neighbor had no problem with the shed and her disappointment with the Board. Mr. Kleiberg

explained that at some point in the future, someone who is displeased with the Board's approval could sue the Board. Ms. Smith explained that the original plans were properly submitted and reviewed for completeness. In response to the Engineer's comments, the Applicant submitted Sheets 4 and 5 as Exhibits, which are not subject to the 10 day review. Mr. DeNoia agreed that Exhibits provided at the hearing to clarify the Application are not subject to the 10 day review. Mr. Wible asked if there was a technicality preventing the Board from making a motion. Mr. DeNoia stated that there may not be a technical reason, but that there seemed to be other concerns regarding modifying the plans and clarification of the Exhibits. He stated that when the Applicant goes to the Building Dept. for a determination that the building was constructed as planned, that there is a standard to determine deviation from. Which is why typically, plans and presentations are specific. He noted that the Board as well as some neighbor are concerned that this Applicant is being kept from his home and that the without the RREM time constraints, there would probably not be a problem. Mr. Wible stated that in the past, Applicants have been asked to return to the Board because of technicalities, but he doesn't see that in this instance. These are changes, not errors. Mr. Kahle stated he didn't want the Applicant to lose the grant money but if there was a way to call RREM and get it moved over, maybe it's one phone call. Mr. Cartwright explained the delays he has experienced with RREM and why it's not a one phone call answer.

Mr. DeNoia suggested the Applicant specifically identify what items they want the Board to consider. Mr. Lalka stated that if the Board would consider a conditional grant of approval, the shed which is .91 feet from the side yard would be removed. The side steps on the north would be removed so the building would comply with the side yard setback on the north side. The Applicant would resubmit the architectural plans so they are consistent with primary ideas: include the half story plan that is less than 1/3 of the story below by removing the 1 ½ feet excess from the closet, reducing the height of the third floor to the minimum 7 feet, which would reduce the height variance to 1 foot above the allowable 35. Mr. White had asked him to provide a calculation for the average front and rear yards in the neighborhood. Mr. Lalka advised that the average front setback is 19 ½ feet. The Applicant is proposing 17.9, which is pre-existing and which is within 2 feet of the rest of the neighborhood. The average rear is 54 feet, the proposed is 88. Mr. Wible summarized the list of variances needed.

Mr. DeNoia asked Ms. Coffin to testify regarding the need for the variances.

Ms. Coffin stated she reviewed the variances under the C-1, hardship and C-2, flexible C standard. The C-1 standard for the front yard setback is where the pre-existing front wall stands. The slight increase is to square off the footprint, but it is consistent with the pre-existing, non-conforming front yard setback. The shed is also a pre-existing, non-conforming structure. The height variance is due to several factors, which include the required head room for the ceiling heights to be brought up to code and the necessary roof slope. Under the flexible C standards, the variances advance the purposes of the Municipal Land Use Law with regard to promoting the public welfare and preserving safety from flood.

Ms. Coffin continued that it was her opinion that the benefits of the variances outweigh the detriments. Benefits include rehabilitating a property that was substantially damaged during Sandy and returning it to a viable use, while preserving it from damage in future storm events. She stated that there is no significant detriment that would result from the variances. The height variance is needed to elevate the first floor for flood safety. The slope of the roof and the required ceiling height also affect the need for the variance. The difference is insignificant and will have no different impact on light, air and open space than a conforming space. The front yard setback will square off the building, which will have no substantial detrimental impact. Overall, the structure will have a positive impact on the visual character. There is no substantial impairment to the Master Plan or the zoning ordinance. The use and overall intensity of the use is permitted. The building is located in substantially the same location it has been since the 1800's. The net impact is to repair a property that was damaged in Sandy to a viable and appropriate use and return the family to their home.

PUBLIC:

Chairman Widdis opened the meeting to the public for questions for this witness. Mr. Kleiberg asked how long Mr. Cartwright owned the property. Mr. Cartwright replied that he grew up there and owned it for 15 years. As no one from the public wished to be heard Chairman Widdis closed that portion of the hearing.

Chairman Widdis requested a motion. Mr. Wible made a motion to approve the application that includes three variances, a front yard setback of 17.91 feet, a building height variance of 36 feet and a variance for the shed of 2.06 on the north side of the property. In addition, the Applicant will resubmit plans to sufficiently satisfy the needs of the Board Engineer that would demonstrate drawing compliance with the three variances, showing an elimination of the stairs on the north side of the building, as well as a properly complying third floor, and that the Applicant must submit documentation sufficient to the Engineer’s requirements to demonstrate similar setbacks of the neighboring properties as previously described and demonstrating removal of the shed on the south side of the property in the drawings. Mr. Wible added a fourth variance to permit a front yard setback of 17.91, while his neighbors are on average 19.5, which was seconded by Mr. Foster. The motion received the following roll call:

- AYES: Mr. Whitson, Mr. Wible, Mr. Foster, Councilwoman Cooper, Mr. Savarese, Mr. Kleiberg, Mr. Kahle, Mr. Proto, Mr. Widdis
- NAYES: None
- ABSTAIN: None
- ABSENT: Mr. Sullivan, Mr. Fichter

Ms. Smith stated the motion carried.

PETITIONS FROM THE PUBLIC: Chairman Widdis opened the meeting to Petitions from the Public. As no one from the public wished to be heard, Chairman Widdis closed that portion of the meeting.

ADJOURNMENT: As there was no further business, the meeting was adjourned at 10:23 p.m. on a motion by Mr. Foster which was seconded by Mr. Kleiberg and approved by the Board.

Respectfully submitted,

JEANNE SMITH
Secretary