

**OCEANPORT PLANNING BOARD
MINUTES
January 10, 2017**

Mr. Widdis called the meeting to order at 7:30 p.m.

Mr. Widdis led the flag salute.

OATHS OF OFFICE:

Ms. Smith administered the Oaths of Office to the following persons:

William Sullivan, Class I

Joseph Foster, Class II

Patricia Cooper, Class III

Robert Kleiberg, Class IV

John Kahle, Class IV

Mr. Widdis 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 December 30, 2016 and by the posting of same on the municipal bulletin board and Borough Web Site."

MEMBERS PRESENT: Mr. Sullivan, Mr. Foster, Councilwoman Cooper, Mr. Savarese, Mr. Kleiberg, Mr. Kahle, Mr. Fichter (entered 7:49pm), Mr. Whitson, Mr. Widdis

MEMBERS ABSENT: Mr. Proto

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

ELECTION OF CHAIRMAN: Mr. Whitson made a motion to nominate Mr. Widdis as Chairman, which was seconded by Mr. Foster and was approved by the Board members.

ELECTION VICE-CHAIRMAN: Mr. Kleiberg made a motion to nominate Mr. Whitson as Vice Chairman, which was seconded by Mr. Kahle and approved by the Board members.

APPOINTMENT OF BOARD SECRETARY: Mr. Whitson made a motion to nominate Ms. Smith as the Board Secretary, which was seconded by Mr. Foster and approved by the Board.

BOARD BUSINESS:

1. **Resolution PR-17-01** Approving 2017 Meeting Schedule which was moved by Mr. Whitson, seconded by Councilwoman Cooper and received the following roll call:

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

NAYES: None

ABSTAIN: None

ABSENT: Mr. Proto, Mr. Fichter

INELIGIBLE: None

Ms. Smith stated the motion carried.

2. **Resolution PR-17-02** Appointment of Board Attorney. Chairman Widdis reported that Mr. DeNoia's response was only one received in response to the Request for Proposals,

summarized Mr. DeNoia's experience and made a motion to approve the appointment of Mr. DeNoia which was seconded by Mr. Whitson and received the following roll call:

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

Ms. Smith stated the motion carried.

3. **Resolution PR-17-03** Appointment of Board Engineer/Planner. Chairman Widdis summarized the receipt of 3 responses to the Request for Proposals, the extensive experience of Maser Consulting/Mr. White and other factors and then made a motion to appoint William White of Maser Consulting as Board Engineer/Planner which was seconded by Mr. Foster and received the following roll call:

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

Ms. Smith stated the motion carried.

4. **Resolution PR-17-04** Appointment of Special Planner. Chairman Widdis discussed the history with Clark, Caton Hintz and their past experience in advising the Board on affordable housing matters and quality of work and made a motion to appoint Clark Caton Hintz as Special Planner which was seconded by Mr. Whitson and received the following roll call:

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

Ms. Smith stated the motion carried.

5. Minutes of the meeting of November 22, 2016 were approved on a motion from Mr. Whitson and a second from Mr. Kleiberg and approved by the eligible Board members.

NEW BUSINESS:

1. PB2016-11 Kelly, Noel
245 Monmouth Boulevard
Block 76, Lots 1 & 2
Request for Minor Subdivision with variances

A-1 Original Filed Map, Case #24-5, Filed 01-23-1930

A-2 Excerpt of 1930 Subdivision Map Filed as Case #24-5

- A-3 Deed of Property, Block 72-L. Lot 69 and 70, between Maurice M. & Anna Feder; David N. and Carole Ravin, Allen and Irene Ravin and Betty Ravin to Edward Woodfield, dated April 14, 1976
- A-4 Deed of Property, 1982
- A-5 Site Photographs, Kelly Residence, Lot 1 and 2, Block 76, Adrian Way, Source: Google Maps, prepared by Elizabeth Waterbury, PE
- A-6 Satellite Imagery from 2016 Google Maps Data

William White, Board Engineer/Planner was sworn in.

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

Michael Laffey, Attorney for the Applicant, stated the variance request is unusual because the applicant believes the lots should never have been merged. He has presented his legal argument to Mr. DeNoia which falls under the Merger Doctrine set forth in the Lockner decision. In addition, the property is unique because it fronts on four streets.

Elizabeth Waterbury, BM Waterbury, Applicant's Engineer, was sworn, appeared and presented her qualifications and having been previously qualified by the Board was accepted as an expert in engineering. She introduced and described **Exhibits A-1 and A-2**.

Chairman Widdis interrupted the presentation in order to swear in recently arrived member, Mr. Fichter. Ms. Smith administered the Oath of Office to Mr. Fichter.

Ms. Waterbury continued her presentation, explaining that the subdivision occurred in 1930 and showing the current tax map. She introduced **Exhibits A-3 and A-4**. She provided a history of the lots, including the subdivision in 1930 and subsequent common ownership in 1982. There was discussion of old block and lot numbers. Ms. Waterbury discussed frontages and setbacks. Mr. Laffey explained the specific variances being requested. Ms. Waterbury introduced **Exhibit A-5** and discussed the photos. She introduced **Exhibit A-6** and provided information regarding the location of the garage as it related to the adjacent property. Ms. Waterbury stated that the architect was cognizant of the fact that the property is in a flood zone. Ms. Waterbury consulted the DEP to ensure compliance with its requirements. The DEP advised that it would consider the proposal of a house construction on a single lot as opposed to a subdivision because it was pre-existing. There was discussion regarding setbacks at the rear of the dwelling related to the overhang. Mr. Laffey stated that the design will be reconfigured regarding the overhang so that it will be conforming.

Chairman Widdis asked Mr. White to address his letter of December 2nd. Mr. White discussed items in his letter including lot area, lot width, front setback, maximum building height, maximum building coverage and front yard setback. There was additional discussion regarding front yard setback. Mr. White's letter requests impervious coverage breakdown, calculations to show what is driveway, walkway or building. He asked if the application was approved, which method, metes and bounds or filed map, would subdivide the lots. Mr. Laffey stated the metes and bounds method would be used. Mr. White recommended that a deed restriction similar to the DEP requirements be required if approved. Mr. White also suggested that the Board meld this with the adjacent property because the applicant is revising the grading next store. Under the Borough Ordinance, shade trees are required for a subdivision. The boundary and topographic surveys have been received. Mr. White advised that the applicant must receive CAFRA, Monmouth County Planning Board and Freehold Soil Conservation approvals. Ms. Waterbury advised that Monmouth County Planning Board gave the applicant a no interest letter. An application will be made to Freehold Soil pending the outcome of the hearing.

Chairman Widdis asked if the Board members had any questions. Mr. Whitson asked questions about common ownership. Ms. Waterbury confirmed that it had been common ownership since 1982. Mr.

Whitson asked about an existing shed. Ms. Waterbury stated there is an existing shed on Lot 2 that is shown relocated onto Lot 1. There was discussion regarding how many times the property changed hands and how the property was utilized. Mr. Foster asked about the setback by Driveway. Ms. Waterbury explained that for the west side of the property, there is a 25 foot setback to the building. Mr. Kahle asked why the applicant was asking for a subdivision. Mr. Laffey explained that the applicant believes the lot never should have merged. He discussed case law regarding merging lots. There was discussion regarding lots being side by side or back to back. Mr. Savarese noted that the subdivision would leave Lot 1 as non-conforming and undersized. Mr. Laffey stated that the Board needs to make a legal determination as to whether or not the lots have merged. If the Board decides the lots have merged, then that decides the issue. If the Board determines the lots have not merged, then a subdivision is not required. Mr. DeNoia stated that the Board has traditionally taken the position that adjacent lots with common ownership and reviewed based on use. If the lots have common ownership and used as one large lot then merger applies.

Councilwoman Cooper asked if the property taxes were paid as two different lots. That question will be addressed with later testimony.

PUBLIC:

Chairman Widdis opened the meeting to the public for questions for this witness only.

Dan Kearney, Milton Ave., stated that he has lived in the area many years, and the subject lot has been used as one lot. He stated the area floods frequently and there are large houses on small lots, and that contributes to more flooding. Ms. Waterbury replied that she was familiar with the flooding problem in the area. She explained the difference between tidal flooding and rainwater flooding. Ms. Waterbury addressed issues related to impervious coverage.

Valerie Mayro, 465 Adrian Ave., stated the corner of Monmouth Blvd., Adrian Ave. and Driveway floods once a month. People cannot get in their driveways. She stated it's not tidal flooding; it just happens on a regular basis. She thought it was irresponsible for the Borough to allow another building. Mr. White asked Ms. Waterbury if a new building triggered any type of infiltration, detention or water quality requirements. Ms. Waterbury replied it does not because they are under the threshold of a quarter of an acre of additional impervious coverage or an acre of disturbance. Mr. White stated that because of that fact, the ordinance does not require the applicant to address storm water.

Sally Spies, 15 Horicon Ave., asked if the subject property was sold to someone new who wants to build a house to live in and a second house to sell. Her question will be addressed by the owner's testimony later in the hearing.

As no one had any other questions for this witness, Chairman Widdis closed that portion of the meeting.

Robert Depippa, Jr., Architect for the Applicant, was sworn in, presented his qualifications and was accepted as an expert in architecture. Mr. Depippa asked Mr. White to clarify his questions about whether the attic was a half story. Mr. White stated if the attic was a half story, then the building would be three and half stories. He would like to know how much of the attic had 7 ft. half-inch clearance. Mr. Depippa replied that none of the attic space is above 5ft. 8 in. Mr. Depippa stated the balcony shown on the plans are actually stairs. He explained that the overhang on Driveway. The applicant is seeking a variance for the balcony and deck. There was further discussion regarding the balcony, deck and overhang. Chairman Widdis asked what the square footage per floor was. Mr. Depippa stated it was about 1500 sq. ft. per floor, 2 habitable floors and a garage/storage. There was discussion regarding building coverage. Mr. Depippa agreed to reduce building coverage from 26.4 % to 25 %. Mr. Whitson asked if the building was three stories. Mr. Depippa stated by the definition, it is three stories. Mr. Depippa agreed with Mr. Whitson that the plans need to be revised to reflect the changes. Mr. Whitson also noted that the location on the plans says Monmouth Beach, when it should be Oceanport. Mr.

Savarese noted that the building is 5,000 sq. feet, and 30 x 47 equals more than 1250 sq. ft. and 25% of 5,000 is 1250. He suggested that Mr. Depippa revisit that calculation.

PUBLIC:

Chairman Widdis opened the meeting to the public for questions for this witness only.

Valerie Mayro, 465 Adrian Ave., asked questions regarding the third story requirement. She stated Oceanport is only permitted two stories. Mr. White explained 2 ½ is permitted. She expressed concern regarding walk-up stairs with living space and balconies. Mr. White explained that after Superstorm Sandy, the Board adjusted the definition of a story. As long as the first story is below 7 ft. 11 in. clearance and it is not habitable, it can be used for storage, parking and access. Ms. Mayro expressed concern over the size of the building on this size lot. Mr. Depippa stated he didn't believe it exceeded the coverage for that lot.

Matt Zieniewicz, 1215 Turf Dr., stated the lot is 5,000 sq. ft. the house is 1500 sq. ft. frontage, which is a 30 % coverage and it does exceed the 25 %. His question was isn't the building at 1500 sq. ft. and doesn't that equal 30 % of the total lot. He asked wouldn't that require a variance. Mr. Depippa stated that technically the footprint is 1350. There was discussion between professionals. Chairman Widdis stated there wasn't enough clarification in order to make a proper decision. Mr. Laffey asked if the applicant could submit new architectural plans since changes had been made to avoid variances and carry the hearing to allow time to submit new plans. Chairman Widdis also suggested the matter be carried in order to get a better understanding and better plans so the Board can make a proper decision. Mr. DeNoia asked how long the applicant would need to make the revisions, because the application needs to be carried to a date certain. Otherwise, the applicant will have to re-notice. Ms. Smith and Mr. Laffey discussed the meeting schedule and deadline requirements for map filing. After which, Mr. Laffey requested the application be carried to the February 7th meeting. Chairman Widdis explained the hearing for this application would be carried to the February 7th meeting with no additional notice requirement and encouraged the public to contact the Secretary for confirmation of hearing for that night.

Valerie Mayro, 465 Adrian Ave. asked if the property was being sold as one lot or two. Mr. Laffey responded that Mr. Kelly owns both lots, and he will develop the other lot if the Board allows it. Mr. Kelly plans to sell one of the two lots and keep the other. Mr. Kleiberg asked if the for-sale sign was for one or two pieces of property. Mr. Laffey responded that the property is not for sale, but for rent.

PETITIONS FROM THE PUBLIC:

Chairman Widdis opened the meeting for petitions from the public.

Valerie Mayro, 465 Adrian Ave., asked if Noel Kelly was the owner of both properties because her google search wasn't clear. Chairman Widdis asked her to come back to the next meeting.

Sally Spies, 15 Horicon Ave., asked if the applicant could bring better and larger audio/visual display. Chairman Widdis said her point was well taken.

As no one else 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 9:41 p.m. on a motion by Councilwoman Cooper, which was seconded by Mr. Savarese and approved by the Board.

Respectfully submitted,

JEANNE SMITH
Secretary