

**BOROUGH OF WEST CAPE MAY
PLANNING-ZONING BOARD
REGULAR MEETING – SEPTEMBER 13, 2016**

The Regular Meeting of the Borough of West Cape May Planning-Zoning Board, held at the Municipal Building, 732 Broadway, was called to order by Chairman Mulligan at 7:05 PM. After reading the Open Public Meetings Act of 1975 he led all present in the flag salute.

ROLL CALL:

Members:

Doris Jacobsen	present	Kevin O’Neill	present
Art Joblin	present	Diane Rea	present
Pam Kaithern	present	Carol Sabo	present
Mark Kulkowitz	absent	<u>Alternates:</u>	
Barbara Lamb	present	TJ Belasco	present
Paul Mulligan	present	Lisa Roselli	present

Also Present: Brock Russell, Esq., Board Solicitor
Ray Roberts, Board Engineer
Theresa Enteadó, Board Secretary

MINUTES:

August 9, 2016 regular meeting:

On motion of Carol Sabo, seconded by Barbara Lamb, the minutes of August 9, 2016 Regular Meeting were approved on roll call vote as follows: all members present voting in the affirmative.

APPLICATIONS:

Application 006-16, Peter Lance, Block 56, Lot 19, 121 Stimpson Lane, Use Variance/Variance Relief:

Board Members Pam Kaithern and Carol Sabo recused themselves.

Andrew Catanese, attorney for the applicant, presented the application and stated that the current property contains a single family home, and the applicants would like to build a garage with an in-law unit above it. He noted that the garage was a permitted use while the unit above was not. Mr. Catanese said the applicants would require a variance due to the R-5 Zone not permitting duplexes or multi-family dwellings, along with other bulk variances. Mr. Catanese shared that the applicants’ intent was to make this their primary home, a place to raise their children, and to care for their father/father-in-law. Mr. Catanese also indicated that he prepared a deed or Declaration of Restrictive Covenant, which would limit the use of the unit above the garage, to immediate family and their guests, and would prohibit the rental of said unit.

Bethany Johnson and Peter Lance of 1708 Wilson Drive, Villas, were sworn in and introduced themselves. Ms. Johnson testified that she purchased the property from her father and intends to

move into the home as soon as construction is complete. Mr. Lance also indicated that they would like to be in the home as soon as possible. Ms. Johnson testified that she understood the deed restriction and was agreeable to the limitations it would create. She also testified that she was unaware of any neighbors who were opposed to her application.

Dante Guzzi, of Dante Guzzi Engineering Associates, a N.J. licensed professional engineer, was sworn in and testified for the applicants. Mr. Guzzi testified that he prepared the Site Plan, that a single family home and three sheds currently occupy the property, and that the lot was undersized. He also stated there were pre-existing non-conformities of lot frontage and width with one non-conforming side yard setback. Mr. Guzzi testified that the garage being proposed would conform to the maximum lot coverage requirements for an accessory use and the applicant would need a height variance for an accessory structure. Mr. Guzzi argued the benefits of the application, and noted negative criteria would not be affected. He testified that the deed restriction would safeguard against a rental unit and discussed how the application would allow for a better zoning plan than what would be permitted by right.

Board Member Art Joblin felt the proposal would essentially be putting a second home on an undersized lot.

Board Chairman Mulligan wanted to know how the deed restriction would define family. Attorney Catanese said it was defined as immediate family and their guests.

Board Member TJ Belasco felt the deed restriction was a good idea and that the wording was fine the way it was.

Solicitor Russell felt it important to note that sometimes certain deed restrictions could cease to exist after the person being cared for passed away. He also advised the Board that the right to modify and enforce the deed would be the Borough's right.

Board Member Barbara Lamb thought the old R3 code would apply due to grandfathering.

Raymond Roberts, the Board Engineer, asked the applicant's engineer why the garage wasn't placed elsewhere, and Mr. Guzzi replied that due to narrowness and the septic location they had no other choice. Mr. Roberts also had questions about the rain water. Mr. Guzzi testified that two systems would be installed to address rain water runoff. Mr. Roberts asked about parking and Mr. Guzzi testified that the plan allows room for two cars to park with sufficient room in the driveway to turn around and not back out of the driveway. Mr. Roberts wished to advise the Board to be careful, because the definition of a building for accessory use is not for the purpose of housing people. Mr. Roberts felt the unit above the garage was a residential use which should be calculated into the lot coverage. Mr. Guzzi testified that he interpreted the unit to be an accessory and not required but admitted that if the Board deemed it a principal, then Mr. Roberts would be correct, but he also noted that much of the deck was open wood and therefore pervious. Mr. Roberts stated that this answered all his questions.

The floor was opened to residents within 200 feet of the proposed property.

Allen Brown, of 117-119 Stimpsons Lane, testified that he was the owner of the property to the left of the applicant. He felt it would be a nice addition and great to have people who were born in the Borough come back and raise a family here.

Lindsay Casale, of 123 Stimpsons Lane, was also in favor of the application. She testified that she planned on living in the Borough for the rest of her life and would be around to make sure the deed was enforced. She also testified that she knew the applicants did not intend to misuse the unit.

The floor was opened to residents beyond 200 feet of the proposed property.

Pam Kaithern of 207 Stevens, was in favor of the deed restriction. She said the R5 Zone was created because those properties are located outside the sewer service area. She commended the applicants for coming before the Board and presenting their application. She felt it was great to see people raised here, wanting to return and care for a family member as well.

On motion of TJ Belasco, seconded by Art Joblin, the motion to close the public portion was approved on roll call as follows: all members present voting in the affirmative.

The Board further discussed the deed restriction and how enforcement would work. They agreed it was the Board's duty to create the means for the Borough to enforce, that it was not up to the Board to do the enforcing, and they felt the deed restriction would be the means needed.

Solicitor Russell advised the approval would be done in two parts, first the Use Variance and then the Site Plan and Bulk Variances.

Chairperson Mulligan asked for a motion to approve the D Variance with conditions and deed restriction, on motion of Art Joblin, seconded by Kevin O'Neill, the aforementioned motion was approved unanimously on roll call vote.

Chairperson Mulligan asked for a motion to approve the Site Plan with Bulk Variances, on motion of Doris Jacobsen, seconded by Barbara Lamb, the aforementioned application was approved unanimously on roll call vote.

Application 007-14, Paul Burgin, 715 Broadway (Rear), Block 21, Lot 44, Landscape Plan:
Board Members Pam Kaithern and Carol Sabo resumed their seats on the Board while Kevin O'Neill recused himself.

The Applicant, Paul Burgin, was accompanied by attorney Ronald J. Gelzunas, and local landscape expert Josh Nemeth. Mr. Nemeth said he managed to fit 386 trees and 327 shrubs on the landscape plan but admitted that it was quite a task and did not feel that it was the best or healthiest solution for the environment. He felt everyone could gain from some flexibility.

After some discussion, the Board agreed to the applicant's offer to return with a revised

landscape plan. The plan would outline phases, indicate the proposal for trees in easement areas, and indicate the exact reductions and replacements of healthier options. They would also have a list of neighboring property owners who would accept some of the trees proposed to be removed.

Solicitor Russell announced that the hearing would be continued to the October 11, 2016 meeting date, to start at 7:00 PM in Borough Hall.

On motion of Carol Sabo, seconded by TJ Belasco the motion to table the aforementioned application to the next meeting was approved on roll call vote as follows: all members present voting in the affirmative.

Application 008-16, Lawrence A Pray Builders, 847 Broadway, Block 26, Lot 1, Amended Major Site Plan with Bulk Variances:

Under advisement of Board Solicitor Russell, Board Members Pam Kaithern and Carol Sabo recused themselves, while Board Member Kevin resumed his seat on the Board.

Chris Baylinson, Esquire, presented the application on behalf of the applicant. Mr. Baylinson stated the Board previously granted approvals back in 2005. He said the applicant purchased the property and completed the project last year and that all the units conform. He said the reason they were before the Board was because the fence along the northern boundary line was 6 feet tall whereas to be compliant it could only be 4 feet tall. Mr. Baylinson added that the applicant considered the boundary line to be the rear yard however under the Borough's ordinance it is a side yard and therefore non-conforming. He said the other reason was because certain tree species that were not approved were planted along the fence area.

Vincent Orlando, NJ licensed professional planner, engineer, and landscaper, was sworn in and testified that the applicant was seeking relief from the 4 foot fence requirement, and that the fence was meant to provide privacy since the town homes are so close to the property line. He testified that a C-2 variance for the fence would be appropriate, and that the general welfare would be advanced under that rationale. He testified that this was a more efficient use of the land. Mr. Orlando also testified that there would be no detrimental effect to the neighborhood. He added that the fence would only be necessary until the present landscape matured. Mr. Orlando said the original landscape approval required 45 trees, mainly ornamental and 14 shrubs, mainly bayberry. He testified that the applicant planted more than what the landscape required but did substitute arborvitae trees in lieu of the holly that was approved. Mr. Orlando suggested possibly planting native species in between the arborvitae but he was hoping the Board could guide him as to a solution that would be agreeable to everyone.

Raymond Roberts, the Board Engineer, felt that substitutions would be acceptable as long as they were native and not too crowded. He suggested that the east end of the property be utilized, that this area would be most suitable for the habitat that the Borough was trying to create. Mr. Orlando agreed there was sufficient room where Mr. Roberts suggested and he thought planting additional shrubs that would be a food source for wildlife could be a good solution. Chairman Mulligan asked if they would eliminate the arborvitae trees and Mr. Orlando said they wanted to keep them.

Attorney Baylinson summarized that the proposal would be to allow the arborvitae to stay in place of the native species that were originally approved and to take additional native bush species and plant them along the eastern side of the development between the wetland buffer and the town homes. Chairman Mulligan asked if the applicant was going to provide a list of those species. Mr. Orlando wanted to wait and have recommendations from an arborist and wildlife professional but he agreed with Mr. Roberts' suggestion and to submit the plans to Mr. Roberts for his review and approval.

Board Member Art Joblin asked about the fence material. He was advised the fence was vinyl and that it was acceptable.

The floor was opened to residents within 200 feet of the proposed property and seeing no one who wished to speak, it was opened to residents beyond 200 feet of the property. Pam Kaithern of 207 Stevens Street was sworn in. Ms. Kaithern wanted confirmation that there was an approved site plan, that it was revised without coming before the Board first, that various species were planted based on attractiveness not what the Board required, and now a revision would come back to the Board Engineer for review, if approved. Once confirmed, she added that she hoped when the new plan was drafted and put together that the species would be chosen with the neighborhood, the community, and wildlife in mind. She wanted the applicant to keep in mind the amount of water needed when species were not native.

On motion of Art Joblin, seconded by Doris Jacobsen, the motion to close the public portion was approved on roll call as follows: all members present voting in the affirmative.

After some further discussion it was agreed that the applicant was proposing to provide 26 additional shrubs at the east end of the property, that he would consult with his arborist as to the types to make sure they were useful, native and would provide food for wildlife, and that it would be subject to the Board Engineer's review and approval.

Chairman Mulligan asked the Board if they were agreeable to the idea of the side yard approval. The Board agreed it made sense due to the property layout.

Board Solicitor Russell advised the motion would be to grant a C-2 Variance allowing the 6 foot high fence along the legal side yards and also to amend the site plan to allow substitution of the Holly on the condition that 26 additional shrub and tree species be planted by the wetlands buffer, subject to review and approval of the Board Engineer.

On motion of Art Joblin, seconded by Barbara Lamb, the aforementioned application was approved unanimously on roll call vote.

On motion of Art Joblin, seconded by TJ Belasco, the motion to close the public portion was approved on roll call as follows: all members present voting in the affirmative.

On motion of Kevin O'Neill, seconded by Doris Jacobsen, the motion to cancel the November 1, 2016 Board meeting due to a schedule conflict for the Board Attorney, was approved on roll call vote as follow: all members present voting in the affirmative.

PRIVILEGE OF THE FLOOR:

When no one else wished to speak, the meeting was adjourned at 9:46 PM carried by unanimous voice vote.

Respectfully submitted,

Theresa Enteadó
Board Secretary