

**BOROUGH OF WEST CAPE MAY
PLANNING-ZONING BOARD
REGULAR MEETING – June 14, 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 7:09 PM. After reading the Open Public Meetings Act of 1975 he led all present in the flag salute.

ROLL CALL:

Members:

Doris Jacobsen	absent	Kevin O’Neill	absent
Art Joblin	present	Diane Rea	absent
Pam Kaithern	present	Carol Sabo	absent
Mark Kulkowitz	present	<u>Alternates:</u>	
Barbara Lamb (7:30)	present	TJ Belasco	absent
Paul Mulligan	present	Lisa Roselli	present

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

ORDINANCES:

On Motion of Art Joblin, seconded by Lisa Roselli, Ordinance 510-16 was approved on roll call vote as follows: all members present voting in the affirmative. On motion of Mark Kulkowitz, seconded by Lisa Roselli, Ordinance 512-16 was approved on roll call vote as follows: all members present voting in the affirmative.

MINUTES:

On motion of Art Joblin, seconded by Mark Kulkowitz, the minutes of May 10, 2016 Regular Meeting were approved on roll call vote as follows: all members present voting in the affirmative.

RESOLUTIONS:

Resolution 0006-16, Amendment to 0005-16, Susan Crossan, Block 5, Lot 12, 136 Pearl Avenue:

On motion of Pam Kaithern, seconded by Mark Kulkowitz, the aforementioned resolution was approved on roll call vote as follows: all members present voting in the affirmative.

A short break was observed from 7:20 PM to 7:33 PM. Barbara Lamb arrived at 7:30 PM.

APPLICATIONS:

Application 003-16, Continuation of Kubiak/Mitchell, Block 50, Lots 1.01, 1.02, 2, 4th 5th & Bayshore:

Mr. Hillegass reminded the Board that this was a continuation of the May 10th hearing and as

promised they had provided plans so the Board could have a better picture. Mr. Hillegass said unfortunately Mr. Lomax was not free until late in August and the beneficiaries of the estate did not wish to wait any longer. Brian Murphy, professional engineer, and William Sweeney, NJ licensed land surveyor, were both sworn in by Solicitor Russell. Mr. Murphy submitted the following documents for the record: Exhibit A-2 the DEP Coastal Jurisdictional Determination, Exhibit A-3 the DEP Freshwater Wetlands Letter of Interpretation, and Exhibit A-4 the four DEP permits. Mr. Murphy testified that A-3 established the wetland lines and buffers and was used to design the revised plan of six lots which conforms to the DEP permits. Mr. Hillegass offered that the applicants applied to the DEP, the DEP came to the site and based on the site visit, issued the four DEP permits and the development plan that the applicants are proposing is in compliance with those four permits. Mr. Murphy also testified that Lomax and Associates performed a threatened and endangered species investigation in 2012 and the investigation determined that the Copes Grey Tree Frog was present on the site. Mr. Murphy went on to testify that the construction plan shows that reasonably sized dwellings can be constructed on the lots without having to come back before the Board for variance, and that walkways and driveways can be created in the usable area that will meet the impervious coverage requirements. Chairman Mulligan stated that the DEP plan had to be translated to the applicants plan and he wasn't seeing that and wanted clarification. Mr. Murphy explained that certain improvements like driveways and lawns are permitted to be within the wetlands area. He pointed out the hashed areas. He explained that the DEP allowed the applicants to fill in the area under Permit No. 6. He added that the DEP allows certain pluses and minuses with the wetlands buffers and Sheet 3 which shows the buildable area helps demonstrate that. Pam Kaithern asked if the proposed buildable area would be for single family homes only, and Mr. Hillegass replied that whatever the code is, they will comply. This led to further discussion about avoiding future variance requests and enforcement of the building plans. Mr. Hillegass advised the Board that applicants would be agreeable to conditions requiring deed restrictions. Lisa Roselli shared her concerns about the tree frogs and stated that keeping trees will mean saving the tree frogs. Pam Kaithern requested that prior to any removals, a tree inventory be completed and Mr. Hillegass agreed one would be provided. Pam Kaithern asked if there could be reference to the DEP permits in the deeds and Mr. Hillegass said absolutely yes they could. Board member Kaithern also asked if pervious materials could be part of the deed restrictions and Mr. Hillegass agreed they could be. Art Joblin asked to have the storm water management explained again. Mr. Murphy testified that the plan proposes a storm water inlet on State Street which will travel to Bayshore Road and will consist of perforated pipe and will capture water from the road and infiltrate into the ground. Art Joblin asked if there were any calculations or testing done to be sure the ground could take on and absorb the water. Mr. Murphy testified calculations were done. Chairman Mulligan asked what the added cost would be to home construction for the individual storm drainage system. Mr. Murphy estimated about one thousand per unit. Mr. Hillegass noted that a performance bond would be required to guarantee the storm water improvements. Board Engineer, Ray Roberts explained the bond process to the Board and provided his testimony. Mr. Roberts questioned who would be responsible for maintaining the storm water easements and Mr. Hillegass advised the applicants would be responsible. Mr. Roberts then recommended that this be made a condition of approval. Barbara Lamb asked if the DEP was made aware of the existence of the Southern Grey Tree Frog, Mr. Murphy testified that they were indeed made aware.

A short break was observed from 9:05 to 9:09.

During the public portion of the hearing Katherine Creenan of 635 Fourth Avenue in West Cape May, spoke in opposition to the application. She was against the lot depth approval because she stated it was not a true hardship but rather a self-created one. She testified that since 1996 she has witnessed a constant battle to keep water down in this area, and added that some homes have completely lost their backyards. Ms. Creenan said that due to the location of the wetlands, this subdivision would be substantially detrimental to the public good. She said she was very concerned with the extraordinarily high water table and for the future of her home and her neighbor's homes.

Ed Creenan of 635 Fourth Avenue in West Cape May, stated that he was also opposed to the application for the same reasons as his wife. Mr. Creenan presented the Board with a set of 50 photographs, marked as Ed Creenan Exhibit 1, which depict the pooling of water in the area. He testified that the photos were all taken within the past month. Mr. Creenan wished to emphasize that just because the DEP made certain approvals doesn't necessarily mean it is what is best for the community.

Ed Belski of 7 Douglas Avenue in West Cape May, also wished to testify against the application. He also feels there is no hardship here because the applicant could develop the site without variance by only creating three or four lots. He urged the Board to deny this application because of the applicants' desire to over develop. Mr. Belski testified that his prior home had the exact sewer line that this application is proposing and the main became clogged with debris and was never fully operational afterwards. Mr. Belski also noted he was very surprised to hear the DEP agreed to fill in an area of wetlands where tree frogs were found.

Norm Roach, the Borough Zoning Officer, testified that if the Board were to approve the application, a condition should be written into the resolution to require each individual property to have its own storm water drainage system.

On Motion of Art Joblin, seconded by Mark Kulkowitz, the public portion of the meeting was closed unanimously on roll call vote. Mr. Hillegass noted that back in 2012 the Board wanted the applicant to go to the DEP. The applicant did so, and it took three years to get the DEP approvals, however eventually they did get them. The plan was reduced from nine lots down to six lots. He stated this application was a classic C-1 Variance Hardship. Solicitor Russell further explained the C-1 variance and advised the Board that they must consider if the applicant passed the task for a C-1 variance or if they feel they have enough land to not require lot depth variance. He also advised the Board to consider if this approval would offend the Master Plan.

Mark Kulkowitz inquired how an abstention would count towards the vote and numerous comments were made on the board that an abstention would count as a no vote.

Chairperson Mulligan asked for a motion to approve, on motion of Mark Kulkowitz, seconded by Barbara Lamb, roll call vote was as follows: Art Joblin, Pam Kaithern, and Lisa Roselli voting in the affirmative, Paul Mulligan voting in the negative, and Barbara Lamb and Mark Kulkowitz abstaining.

PRIVILEGE OF THE FLOOR: Katherine Creenan wished to mention the addition of more mosquitos that the water issue would likely bring about. She also questioned the outcome of the application vote. Solicitor Russell announced that he believed the application did not carry but he could not discuss the application any further since the hearing was closed and the applicant had left.

When no one else wished to speak, the meeting was adjourned at 10:32 PM on motion of Mark Kulkowitz, seconded by Art Joblin, and carried by unanimous voice vote.

Respectfully submitted,

Theresa Enteadó
Board Secretary