

**BOROUGH OF WEST CAPE MAY
PLANNING-ZONING BOARD
REGULAR MEETING – January 7, 2014**

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 7:15 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	absent
Pam Kaithern	present	Carole Sabo	present
Mark Kulkowitz	present	Alternates:	
Barbara Lamb	present	TJ Belasco	present
Paul Mulligan	present	vacancy	

Also Present: Brock Russell, Esq., Board Solicitor
Ray Roberts, Board Engineer
Elaine Wallace, Recording Secretary

RESOLUTION 0001-14 for Closed Session to Discuss Personnel Issues:

On motion of TJ Belasco, seconded by Mark Kulkowitz, the board approved the aforesaid resolution and recessed into closed session at 7:15 PM. The regular meeting was reconvened on motion of Art Joblin, seconded by Mark Kulkowitz, and carried unanimously on roll call vote.

REORGANIZATION

Appointment of Chairperson

Art Joblin nominated Paul Mulligan as chairperson. Mark Kulkowitz seconded the motion which was carried on roll call vote as follows: Mulligan abstaining, all remaining members present voting in the affirmative.

Appointment of Vice Chairperson

Paul Mulligan nominated Kevin O’Neill as vice-chairperson. Carol Sabo seconded the motion which was carried on roll call vote as follows: O’Neill abstaining, all remaining members present voting in the affirmative.

Appointment of Board Secretaries

On motion of Doris Jacobsen, seconded by Pam Kaithern, the board unanimously approved the appointments of Dianne Rutherford as Administrative Secretary and Elaine Wallace as recording secretary.

Appointment of Board Solicitor

On motion of TJ Belasco, seconded by Kevin O’Neill, the board unanimously approved the appointment of Brock Russell as board solicitor.

Appointment of Board Engineer

On motion of Art Joblin, seconded by Doris Jacobsen, the board unanimously approved the appointment of Raymond Roberts of Remington and Vernick Engineers as planning board engineer.

Approval of Meeting Dates & Official Newspapers for Publications

On motion of TJ Belasco, seconded by Mark Kulkowitz, the board approved the meeting dates for 2014 and the official paper as the Star and Wave. The Press of Atlantic City is the secondary paper of record.

Oaths of Office for Members

Doris Jacobsen, Art Joblin, Barbara Lamb, Kevin O'Neill, and TJ Belasco were sworn in by Solicitor Russell.

MINUTES: On motion of Carol Sabo, seconded by Art Joblin, the minutes of the December 17, 2013 meeting were approved on roll call vote as follows: Lamb and Belasco abstaining, the remaining members present voting in the affirmative.

NEW BUSINESS:

Application 009-13

Will Riccio, Stevens Street, Block 74 Lot 1 and Block 73 Lots 5 & 7.01

Art Joblin recused himself from the hearing because he lives within 200' of the applicant. Louis Dwyer, attorney for the applicant, asked to have application 009-13 heard first, then depending on the results, hear application 010-13. Property owners Will Riccio and Curtis Bashaw were sworn in by the Board Solicitor. Vince Orlando, Engineer was sworn in by the Board Solicitor and deemed an expert. Mr. Bashaw explained they purchased the property in 2007 with a vision of creating a homestead, restoring the farm, and supplying his restaurants and businesses with the produce from the farm. He would like to build his home on the property, as well as an additional residence for friends and family and possibly employees that work on the farm. This application entails allowing an access easement along the existing driveway on Block 73, Lot 7.01 to Block 74, Lot 1 and Block 73, Lot 5, allowing the applicant to build a single family home on each of the latter lots that don't have street frontage. Mr. Orlando read aloud from 40:55D-36, which allows the board to grant a variance if enforcement would entail practical difficulties or unnecessary hardship, provided there is adequate access for emergency vehicles. The West Cape May Volunteer Fire Company (VFC) inspected the site and drove the pumper truck onto the site. In a letter dated December 11, 2013, the VFC stated there is adequate access for emergency vehicles. Solicitor Russell marked the VFC letter as exhibit "Riccio #1" and an aerial photo as "Riccio #2". The applicant seeks no other variances with regard to these lots. Mr. Orlando also testified the applicant has received approval from the NJDEP and Cape May County Health Department. If the application is approved, Mr. Dwyer will provide a deed of easement recorded with the County Clerk. Board Engineer Ray Roberts was sworn in and reviewed his report. The applicant has provided revised plans and photographs as requested in the engineers report. They have also provided the letter from the VFC determining adequate access for emergency vehicles. He asked the applicant to provide 2 copies of the DEP and County approvals for the files as well as a copy of the permanent deed of easement, once filed with the County Clerk. Pam Kaithern asked two questions, but was advised

they pertain to the next application, not the one being discussed currently. Paul Mulligan asked how the maintenance of the driveway network would be handled. Mr. Dwyer explained the deed will provide for the sharing of the cost of maintaining the easement by all three lot owners.

The Chair opened the public hearing to anyone within 200' of the applicant.

Colin Bell, Esq., appearing on behalf of neighbor Barbara Wilde, asked to question Vince Orlando. He asked Mr. Orlando to state the title owners of the three parcels in question. He then stated the owners of the LLCs involved are the same and the law requires contiguous lots to be combined into one. Mr. Orlando disagreed, stating the doctrine is for the purpose of consolidating undersized lots, and the lots in question are oversized. Also, the Borough had ample time to revise the lots if so desired, but has not done so. Mr. Bell asked Mr. Orlando if, in his capacity of planner for other government agencies, particularly the planner for Middle Township, he ever approved easement access to landlocked parcels. Mr. Orlando guessed about 10 or 12, but each application is heard on its own merits. Mr. Bell asked if the compact gravel driveway goes through wetlands. Mr. Orlando explained it does go through wetlands, but it has been approved by the DEP. Mr. Bell stated the road would be under water any time it rained, but Mr. Orlando explained the road itself is above the existing grade and doesn't flood. Mr. Bell asked if the elevation of the road is shown on the drawings. Mr. Orlando stated it is not on the plans, nor are the wetlands and buffers because most of the site is wetlands, which is why the owners sought a DEP permit for footprint disturbance. Curtis Bashaw explained there is a wetlands delineation for the entire parcel 74/1, and a footprint of disturbance for 73/7.01, the rear lot has wetlands delineation filed with the County. The DEP permit for the road was received in 2007. The applicant is willing to provide copies of all permits received in connection with the parcels as a condition, if approved. Mr. Bell asked if there will be signage as required for multiple residences. Mr. Orlando stated it would be provided if necessary, and Mr. Dwyer stated it is a good idea to provide it. Mr. Bell asked how wide a public road has to be. Mr. Orlando stated this would be a driveway, not a public street. Mr. Roberts stated the driveway would have to be 10' wide and the plans show the easement is 20' wide. Mr. Orlando explained the easement will be 20', but the cartway would vary along the length. Mr. Bell stated the easement to allow access is also for a residence as part of the next application and argued they should be heard together. Solicitor Russell asserted the applications were stand-alone because they had to be heard by different configurations of the board and it would not be proper to combine them.

Jan Conwell, 120 Stevens St, was sworn in by Solicitor Russell. She felt it was difficult to understand the plans and the driveway. Mr. Bashaw explained it would be the same driveway. Ms. Conwell stated she would like to see the approval go through.

When no one else from within 200' wished to speak, the Chair opened the hearing to the general public. When no one wished to speak, Mark Kulkowitz made a motion to close the public hearing, seconded by TJ Belasco.

Mr. Dwyer stated the request is not typical, but the proposed road would provide safe and adequate access to the properties. The applicant has met the test in the statute. He also asserted use of the lands for agriculture and two single family homes, is a good use of very large sized lots. Solicitor Russell explained to the board the legal issue is whether, under 40:55D-36, the

applicant has shown “practical difficulty or unnecessary hardship” to develop parcels that are landlocked.

Kevin O’Neill made a motion to approve variance relief for an easement to provide street access to lots without frontage with conditions as recommended by Engineer Roberts and placed on the record by the applicant. Mark Kulkowitz seconded the motion which was carried unanimously on roll call vote of members present, with the exception of Art Joblin who recused himself before the application was heard.

Application 010-13

Will Riccio, Stevens Street, Block 73, Lot 4

Art Joblin recused himself because he lives within 200’ of the applicant. Pam Kaithern and Carol Sabo recuse themselves because application is for a D variance. Chairperson Mulligan asked why the application was for a D variance and Mr. Russell explained there are two existing single family homes on lot 4, which means approval of a subdivision would increase an existing non-conformity of two primary uses on one parcel. Solicitor Russell again swore in Vince Orlando, Will Riccio and Curtis Bashaw. Mr. Bashaw and Mr. Riccio are contract purchasers of a portion of the Christensen property if the subdivision is approved. The rear portion of the Christensen property abuts Riccio’s and Bashaw’s parcel where their herb gardens are located. They have been farming the land in question for three years under agreement with the Christensens. The applicants are interested in adding this land to allow expansion of the farm and to add a cottage. The property owners entered into a contract to purchase land contingent upon DEP approval of footprint of disturbance, which has been received. Vince Orlando testified regarding the major subdivision plan dated 9/30/13 and revised 12/23/13. The use variance is for an expansion of non-conformity. The existing houses and sheds are staying the same and no changes are proposed for what would become lot 4.01. He asserted density isn’t an issue because the lots are roughly 2 and 4 acres and would only have 3 homes if the application is approved. The owners applied to DEP for a footprint of disturbance for a 25’x37’ home and received it. If approved, lot 4.01 would require a use variance for two primary uses on one parcel and a bulk variance for sideyard setback, which is also pre-existing. Parcel 4.02 would require allowing access from the easement previously approved and a variance for sideyard setback because of where the DEP permitted the building to be placed. This setback would only effect the adjacent property which is partially owned by these applicants. Mr. Orlando testified the application would promote light, air and open space because it provides for only 2 homes on 2 acres of property, which doesn’t increase the density of that lot. The second lot would be 4 acres and have only 1 home. The density of the two parcels is well below the allowed level so it would promote appropriate density and preservation of the environment. The neighborhood will not look any different because no changes are being made to the existing homes that front the street. He also didn’t feel it would be a detriment to zoning because there is no change to the configuration and the reduction of land area has no impact on the zone plan or the neighborhood. The access for the additional dwelling wouldn’t have an impact either because the road is approximately 15-18’ wide and already exists. Traffic would be minimal to this home as well as the other two the easement would service. He felt site visibility would be more than adequate. The Fire Company provided a letter for this property stating there is adequate access for emergency vehicles, provided some remedial tree removal is done. Mr. Bashaw has agreed to that. Again, the applicant will provide copies of all approvals and permits received as well as a

copy of the deed of easement. Mr. Orlando also explained this is a major subdivision, rather than a minor, because there isn't access from the street, but rather from an easement. Board Engineer Ray Roberts reviewed his report which was for the original application, but was reviewed once the amendment was received. Mr. Roberts asked why the owners of what would be 4.01 don't subdivide that parcel so a use variance would not be necessary. Mr. Dwyer's understanding is the parcel has been in the same family for many years and they want to keep the homes together for the family. Mr. Orlando asserted that dividing that land would require additional variances for frontage, setbacks, encroachments and more and would be very complicated. He also felt it would be hard to establish criteria for that further subdivision. Mr. Roberts stated all the concerns in his report have been addressed.

The Chair opened a public hearing for anyone within 200' of the applicant.

Colin Bell, for neighbor Barbara Wilde in opposition of the application, asked Mr. Orlando if there would be any public access to the subdivision. Mr. Orlando explained lot 4.01 would have frontage and lot 4.02 would be accessed by an expanded easement over lot 5 connecting to the easement approved during the previous application. Mr. Bell stated the subdivision ordinance requires 2 points of access and no variance was sought for that requirement. Mr. Orlando explained the subdivision is for only one home, not numerous lots, and the subdivision ordinance is not a zoning ordinance so only a waiver would be necessary. Mr. Bell thought he heard during testimony that the house may be used for farm workers, which isn't a permitted use. Mr. Orlando asserted the house isn't slated for anyone specific, but it will be a single family dwelling. Mr. Bell disagreed with Mr. Orlando's assertion that the application promotes light, air and open space because it is increasing density. Mr. Orlando argued that, although one more house is being proposed, development is still far below the permitted density thus, it promotes light, air and open space. Mr. Bell asked if a deed restriction concerning farming was submitted with the application. Mr. Orlando stated a deed restriction was not filed, but the requirement will be met. When asked about access, Mr. Orlando described the proposed driveway and asserted it would have no impact on wetlands. Mr. Dwyer explained the structures have been around for 100 years and no changes are being proposed, so the variance is only a technicality because the side of the land is changing. If the owners increased the lot size, they would still need a D variance because it is nonconforming.

Bruce Conwell, 120 Stevens Street, was sworn in and asked about the use of the proposed cottage. Mr. Orlando explained it will be a single family dwelling with a number of bedrooms and one kitchen, but the plan does not address the number of people that can live there. The permitted footprint isn't large, so the dwelling can't be too large. Mr. Conwell supported the application for his neighbor but does not want to see the property used for commercial purposes and would feel better if it were deed restricted to use as a single family home only.

The Chair opened the hearing to the general public. When no one wished to speak, the public hearing was closed on motion of Mark Kulkowitz, seconded by Doris Jacobsen.

Colin Bell gave a summation of his opposition to the application. He felt the fact that the owners could further subdivide the land so there wouldn't be 2 primary uses on one parcel, simply because they didn't want to is reason enough to deny the application. He also felt the applicant

didn't meet the criteria for providing light, air and open space, because they will be increasing density and the master plan says density should not be increased in agricultural areas. Lastly, the ordinance states there should be 2 accesses to public roads, and this application only provides one. Mr. Bell asked the board to deny the application because the applicant did not meet the burden of proof.

Louis Dwyer gave his summation of his clients' application. He asserted the board should grant relief for several reasons including undue hardship, the oversized nature of the parcels, the existence of two historic homes on the street front, the Fire Company has asserted there is adequate access for emergency vehicles, and the variance is of the most technical nature with no new use being requested. There is plenty of frontage, the two lots would have their own access, there is 2 ½ times the land necessary to meet the zoning standards for lot size. He also explained that case law says it is not necessary to prove the same standards as if they were using virgin land. Also, negative criteria are relaxed in this type of instance. Mr. Dwyer stated this is clearly a case of undue hardship to saddle the owners with 6 additional acres of land to keep their homes as they are. He reasserted the VFC confirmed there is safe access.

Solicitor Russell recommended the board first vote on the D2 variance for the expansion of a preexisting nonconformity, then entertain the major subdivision approval with 2 bulk variances.

TJ Belanso made a motion to approve the D2 variance. Mark Kulkowitz seconded the motion which was carried on roll call vote as follows: Jacobsen, Kulkowitz, Lamb, Mulligan, O'Neill, and Belasco voting in the affirmative; none voting in the negative. Joblin, Kaithern, and Sabo recused themselves prior to the application being heard.

Solicitor Russell asked the board to consider the major subdivision with bulk variance.

Mark Kulkowitz made a motion to approve a technical major subdivision of 1 lot into 2 with design waiver for second street access and 2 bulk variances – preexisting sideyard setback on lot 4.01 and sideyard setback on lot 4.02. Kevin O'Neill seconded the motion which was carried on roll call vote as follows: Jacobsen, Kulkowitz, Lamb, Mulligan, O'Neill, and Belasco voting in the affirmative; none voting in the negative. Joblin, Kaithern, and Sabo recused themselves prior to the application being heard.

PRIVILEGE OF THE FLOOR: No comments

On motion of Pam Kaithern, seconded by Carol Sabo, and carried by unanimous voice vote, the meeting adjourned at 9:29 PM.

Respectfully submitted,

Elaine L. Wallace
Recording Secretary