

**BOROUGH OF WEST CAPE MAY
PLANNING-ZONING BOARD
REGULAR MEETING – July 10, 2018**

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 Belasco at 7:30 PM. After reading the Open Public Meetings Act of 1975 he led all present in the flag salute.

ROLL CALL:

Members:

TJ Belasco	present	Kevin O’Neill	present
Peter Burke	present (at 7:37)	Lisa Roselli	present
Bob Hewitt	present	Carol Sabo	present
Doris Jacobsen	absent	<u>Alternates:</u>	
Art Joblin	present	Lindsay Casale	absent
Paul Mulligan	present	Barbara Lamb	present

Also Present:

Brock Russell, Esq., Board Solicitor
Raymond M. Roberts, Board Engineer
Theresa Enteadó, Board Secretary

MINUTES:

June 12, 2018 Regular Meeting

On motion of Paul Mulligan, seconded by Art Joblin, the Minutes of June 12, 2018 Regular Meeting were approved, as corrected, on roll call vote as follows: Bob Hewitt, Art Joblin, Paul Mulligan, Kevin O’Neill, Lisa Roselli, Carol Sabo, and TJ Belasco voting in the affirmative.

RESOLUTIONS:

Resolution #0008-18 Adopting a Housing Element and Fair Share Plan

Fred Heyer, licensed professional planner retained to prepare the housing element and fair share plan, as required by the state of New Jersey, was sworn in and described the process. He said the principle purpose of the housing plan is to address the municipality’s assigned affordable housing obligation. Mr. Heyer said the Borough was in very good shape to move forward with the third round certification.

The floor was opened to residents within 200 feet and beyond, when no one expressed a desire to speak, the public portion was closed.

On motion of Art Joblin, seconded by Paul Mulligan, the aforementioned resolution was

approved, on roll call vote as follows: Bob Hewitt, Art Joblin, Paul Mulligan, Kevin O'Neill, Lisa Roselli, Carol Sabo, Barbara Lamb and TJ Belasco voting in the affirmative.

Resolution #0009-18 Deeming Ordinance 539-18 Consistent with the Borough Master Plan

On motion of Lisa Roselli, seconded by Kevin O'Neill, the aforementioned resolution was approved on roll call vote as follows: Peter Burke, Bob Hewitt, Art Joblin, Paul Mulligan, Kevin O'Neill, Lisa Roselli, Carol Sabo, Barbara Lamb and TJ Belasco voting in the affirmative.

Resolution #0010-18 Approving Amended Minor Site Plan, for Dominic Fulginiti, 122-128 Sunset Blvd., Block 33, Lot 13.01, 13.02, 14, App 008-18

On motion of Paul Mulligan, seconded by Lisa Roselli, the aforementioned resolution was approved on roll call vote as follows: Peter Burke, Bob Hewitt, Art Joblin, Paul Mulligan, Kevin O'Neill, Lisa Roselli, Carol Sabo, and TJ Belasco voting in the affirmative.

Resolution #0011-18 Approving Minor Subdivision, for Charles D. Lomax, 125 Sixth Ave., Block 51, Lot 11, App 006-18

On motion of Carol Sabo, seconded by Bob Hewitt, the aforementioned resolution was approved on roll call vote as follows: Peter Burke, Bob Hewitt, Art Joblin, Paul Mulligan, Kevin O'Neill, Lisa Roselli, Carol Sabo, and TJ Belasco voting in the affirmative.

Resolution #0012-18 Approving Minor Site Plan and Variance Relief, for Lawrence A. Pray Builders, 107 W. Grant Street, Block 28, Lot 3, App 004-18

On motion of Paul Mulligan, seconded by Lisa Roselli, the aforementioned resolution was approved, as corrected, on roll call vote as follows: Peter Burke, Bob Hewitt, Art Joblin, Paul Mulligan, Kevin O'Neill, Lisa Roselli, Carol Sabo, and TJ Belasco voting in the affirmative.

APPLICATIONS:

Application 003-18, Bernard Dera, 313 Sixth Ave., Block 55, Lots 27, New Application – Minor Subdivision with Variance Relief

Attorney Brian Callaghan with the law firm Callaghan, Thompson & Thompson out of Atlantic City, NJ introduced himself. Mr. Bernard Dera, applicant and owner of the subject property, and Thomas Dase, licensed professional engineer and planner in NJ, were both sworn in.

Mr. Callaghan discussed the history of the property, mentioning the minor subdivision of a neighboring property (owned by Vasser for the record) back in 2005 that he said created a 10.9 acre strip of land that was conservation restricted as well as the lot that is the subject of the application. He said back then the board granted minor subdivision, use variance, and front yard setback for the existing house. Mr. Callaghan indicated that if the board had instead, approved a three lot subdivision then there could be three 35,000 square foot lots today. Mr. Callaghan said the prior application by Mr. Dera was denied based on three reasons, no septic, the building was dilapidated, and lot sizes were 62% of what they should be. He said tonight's application is different because septic has been approved, and the house has been re-built within the same footprint. Mr. Callaghan responded to a question by the Board Solicitor confirming that there are two residents on the property, the re-constructed house, and an efficiency unit. Mr.

Callaghan said the applicant is here tonight for minor subdivision and variance for lot area, lot width, and lot frontage.

Mr. Dase referred to the subdivision plan that was submitted with the application and testified that the purpose is to carve out a lot for each existing structure. He said doing so would remove the use variance and create no other conditions that do not already exist today. He testified that if he was the planner back in 2005, he would have recommended two 100 x 350 foot lots that fully conformed which would have left 9.72 acres for farmland preservation. Mr. Dase discussed the R5 district and the intention to preserve land and protect wetlands. He also discussed the R2 district that allows for smaller lots as well as the R1 district, both of which border the subject property. Mr. Dase pointed out lots in the R5 that do not meet the 35,000 square foot requirement as well as lots across the street that would be similar to what the applicant is seeking. Mr. Dase testified that the proposed lots would promote more light, air, and open space than other lots in the district. He said two single family lots would be a better fit for the area and there would be no substantial impairment to the zoning ordinance because this is a unique situation in the R5, so it would not set any kind of precedence.

Board Member Paul Mulligan expressed his concern over prior application testimony regarding the existence of the 208 Sewer Service Plan. He reminded everyone the plan was adopted by the State, and adopted by the County, and would apply to all municipalities in Cape May County. He said to approve this application would most certainly set a precedent. Mr. Mulligan discussed the two years he spent, as chairman of the Board, on cross acceptance for the Borough and the State of New Jersey.

Mr. Dase responded by saying, if the lot did not have two legally existing septic systems and two legally existing structures, they would not be before the board. He said they are just asking to create two lots where one exists.

Mr. Mulligan said the 208 sewer plan is law by which he and the other board members must abide, and he read the following from the plan "no new lot shall be created less than 35,000 square feet in a non-sewer service area". He said getting a septic system approved by the County is irrelevant to the principal of the 208 Sewer Service Plan.

Board Member Peter Burke wanted to express that nothing has changed from when the property was purchased by the applicant, he bought the property knowing what the rules were.

Mr. Raymond Roberts, Board Engineer, requested that the maximum gross floor area and the floor area ratio be added to the testimony for the record. Mr. Dase said for proposed lot 27.01 the building coverage is 6%, the gross floor area is 1,440 square feet, and the floor area ratio is 12%. For lot 27.02 the building coverage is 2%, the gross floor area is 610 square feet, and the floor area ratio is 2%. Mr. Roberts asked the applicant to provide supporting testimony for the request of waiver from landscape plan and grading plan submissions. Mr. Callaghan said they would agree to those plans being a condition of approval.

Board Member Mulligan wanted to clarify that the septic systems were approved at the time of the last application, that the property is not grandfathered, and that the County documents

provide that new subdivisions of land may not be used to create lots less than 35,000 square feet. Section 5.3 of the 208 Plan is attached hereto as exhibit A, along with Borough Ordinance No. 348-05 as exhibit B.

Board Member Lisa Roselli said she was on the Board in 2005 for the Vasser application. She said the board was presented with an application, that already had an agreement with the State for open space and farm land preservation, and they approved that application. She wanted the record to reflect that the board, at that time, did nothing wrong.

The floor was opened to residents within 200 feet and beyond. Dorothy Gambardella, of 206 Glenn Creek Road, Townbank was sworn in and testified that she has been interested in purchasing this property for a while. She thought the concept was quite simple and the lots should be able to be subdivided.

When no one else expressed a desire to speak, the public portion was closed.

After some discussion among the board members and board solicitor it was agreed this would be a motion to approve minor subdivision with the variance relief that this application was seeking.

Board Member Paul Mulligan said he would be voting no because the precedent of violating the State 208 Plan supersedes any variance and this application violates that plan.

On motion of Paul Mulligan, seconded by Kevin O'Neill, the aforementioned application was denied on roll call vote as follows: all members present voting in the negative.

Application 009-18, David Mendo, 276 Sixth Avenue, Block 52, Lot 20.01, New Application – Variance Relief both Use & Substantial

Chairman Belasco, recused himself because he is within 200 feet of the subject property and Carol Sabo and Peter Burke, recused themselves due to the Use variance.

Attorney Ron Gelzunas appeared on behalf of the applicant to present the proposal to the Board. Mr. Gelzunas said this 18,141 square foot lot is located in the R2 zone and currently has a single family home and detached garage on it. He said the proposal is to renovate the garage and add a second floor within the existing footprint for the purpose of creating a garden apartment, similar to an in-law suite.

Jim McAfee, licensed NJ architect, David Mendo, co-owner of the property, and Lisa Wiedmeyer, co-owner of the property were sworn in. Mr. McAfee referenced the site plan and pointed out the placement of the apartment over the garage. He testified that the applicant intends to renovate the existing garage along with constructing the addition, but the same footprint will remain. He said the applicant proposes a small garage on the first floor along with a living room, kitchen and bedroom and the second floor will have two bedrooms and a bathroom. Mr. Gelzunas explained that adding the apartment to the garage changes it from an accessory structure to a principal one, and this change means the side yard setback requirements will not be met. Mr. McAfee agreed and said that is why the applicant is requesting variance for

side and rear yard setbacks. Mr. McAfee said renovating the existing structure would have a positive impact on the area. He explained that the proposal actually reduces lot coverage from the existing 47.3% to 42.9%. This was accomplished by eliminating a large concrete pad, a smaller concrete pad, a portion of the driveway, and the existing shed. Mr. McAfee acknowledged the zone requires 40% but he explained that with the addition of solar calculated, the code will allow a lot coverage requirement of 43%. Mr. McAfee wanted to clarify for the record the gross floor area will be 4,365 square feet not 7,000 as previously indicated because a portion of the structure will be the garage.

Mr. Gelzunas said the proposed use is to have two separate dwellings on the lot, the opposite of what is permitted, which is a two-family dwelling. Mr. McAfee testified that the large size of the lot makes the site suitable for this use. He said the subject property could actually be subdivided into two conforming lots, so allowing this use on this size lot would not create any type of negative impact.

Mr. Mendo testified that the property belonged to his uncle and that his relatives lived in West Cape May for many years. He said he was born and raised in Cape May and intends to live at this property long term. Mr. Mendo said he is not looking to sell this property it will be his home, and he also has no interest in subdividing. The intention is to provide family members with a place to stay. Mr. Mendo testified that the existing car bay will be used as a shed to store equipment because the garage will house his classic car.

Mr. Gelzunas said the applicants have also created a landscape plan for additional buffering and an improvement to the property.

Ray Roberts, the Board Engineer, testified that the application is not exempt from site plan and advised the Board that they should determine if the Use variance is approved tonight will the applicant have to return for site plan approval.

Solicitor Russell advised the Board that it is not unusual for applicants to bifurcate the application when seeking a Use variance.

Mr. Roberts asked if the garage space will have a driveway or if the car will come in and out across the grass. The applicants testified there would be no driveway. Mr. Roberts concluded his report saying he found the testimony regarding the use and rear and side yard setbacks satisfactory.

The floor was opened to residents within 200 feet and beyond. When no one expressed a desire to speak, the public portion was closed.

Board Member Paul Mulligan asked what the site plan would provide that is not being given tonight. Mr. Roberts advised it would show elevations/grading, storm water management, lighting, utilities, parking spaces and revisions to the driveway. The revised plan dated 6/11/2018 that shows the change to the driveway was submitted as A-1.

After some discussion the Board agreed that to have that documentation on file would be the best

decision and so the applicant must return to the board for site plan approval.

Solicitor Russell advised the Board this would be two separate motions, one to approve the Use variance and a second to approve the rear yard setback, both with any/all conditions placed on the record and provided in the engineer review, including the condition to return to the Board for Site Plan approval.

On motion of Kevin O'Neill, seconded by Paul Mulligan, the Use variance for the aforementioned application was approved on roll call vote as follows: Bob Hewitt, Art Joblin, Paul Mulligan, Kevin O'Neill, Barbara Lamb, and Lisa Roselli, voting in the affirmative.

On motion of Paul Mulligan, seconded by Art Joblin, the variance for rear yard setback for the aforementioned application was approved on roll call vote as follows: Bob Hewitt, Art Joblin, Paul Mulligan, Kevin O'Neill, Barbara Lamb, and Lisa Roselli, voting in the affirmative.

PRIVILEGE OF THE FLOOR:

Board Member Paul Mulligan requested that the NJ State 208 Plan be emphasized in the minutes and the resolution.

Solicitor Russell agreed and also said the resolution should indicate that the board found no substantial difference with this application and the previous one.

Board Member Art Joblin wanted to know why expert witness status is extended. Solicitor Russell replied that if they are qualified you have to extend the status, however you do not have to accept their testimony.

When no one else wished to speak, the meeting was adjourned at 9:50 PM carried by unanimous voice vote.

Respectfully submitted,



Theresa Enteado
Board Secretary

**2007 CAPE MAY COUNTY
WATER QUALITY MANAGEMENT PLAN/
WASTE WATER MANAGEMENT PLAN
(208 Plan)**

September 27, 2007

October 16, 1995

Revised May 1, 1999

Revised September 28, 2001 by N.J.D.E.P.

Prepared By:

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Gerald M. Thornton

Freeholder

Kevin L. Thomas, M.A.

Health Officer

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Linda Wilde

Director of Environmental Services

5.3 Administration

The Septics Management Program (SMP) will essentially be administered as it has been since 1980. When a subdivision or site plan application is submitted to the Cape May County Planning Board (CMCPB), pursuant to N.J.S.A. 40:27-1, et seq., County Planning Act, a copy of the application is forwarded to the Cape May County Health Department (CMCHD). The development application is then reviewed for consistency with the SMP.

New subdivisions of land may not create lots that are less than 35,000 square feet (SF).

Proposed developments generating 500 gallons per day (GPD) of wastewater or less, on existing lots, are grandfathered.

New subdivisions of single family residences (SFR's) are assumed to average three bedrooms per residence. According to N.J.A.C. 7:9A-1, et seq., Chapter 9A - Standards for Individual Subsurface Sewage Disposal Systems, a three bedroom residence generates 500 GPD of wastewater. Newly created SFR lots have a minimum lot size requirement of 35,000 SF.

Proposed developments, excluding SFR's, generating more than 500 GPD and less than or equal to 2,000 GPD of wastewater must comply with the minimum lot size requirements in the Septics Management Program.

It should be noted that the Septics Management Program applies only to sanitary wastewater, not process wastewater from industrial treatment works. Projects involving 50 or more realty improvements are subject to regulation pursuant to N.J.S.A. 58:11-25.1 (Realty Improvement Sewerage and Facilities Act) and may therefore be subject to more stringent requirements than provided in the SMP.

Exhibit B.

**BOROUGH OF WEST CAPE MAY
CAPE MAY COUNTY
STATE OF NEW JERSEY**

ORDINANCE NO. 348-05

AN ORDINANCE AMENDING THE ZONING ORDINANCE

WHEREAS, pursuant to the Municipal Land Use Law, the Borough of West Cape May has in effect a Master Plan and Zoning Ordinance; and

WHEREAS, the purpose of that Plan and Zoning Ordinance is to regulate development in the Borough in accordance with certain Borough-wide goals and objectives; and

WHEREAS, the Master Plan and Master Plan Reexamination Report have articulated among its goals the need to balance the preservation of farmland, open space and environmentally sensitive lands with the encouragement of infill development; and

WHEREAS, the Borough also seeks to make its Master Plan and development regulations conform to the goals and policies of the New Jersey State Plan; and

WHEREAS, the State Plan's goals and policies include 1) enhancement of quality of life; 2) promotion of sustainable development; 3) preservation of open space and agriculture land; 4) the preservation of habitat for migrating birds; 5) the reduction of storm water runoff; and 6) reduction of the cost of public services; and

WHEREAS, there are certain areas in the Borough which are outside of the New Jersey State 208 Plan (Sewer Service Area limits) which require a minimum of 35,000 square feet for development; and

WHEREAS, these same areas are inconsistently zoned under the current Borough of West Cape May Ordinance for smaller lot development than allowed by State law; and

WHEREAS, such development would run contrary to both the goals and objectives of the Borough's Master Plan and the goals and objectives of the State Plan; and