

**BOROUGH OF WEST CAPE MAY  
PLANNING-ZONING BOARD  
REORGANIZATION MEETING – January 8, 2019**

The Reorganization 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 7:00 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	Lisa Roselli	present
Bob Hewitt	present	Carol Sabo	present
Doris Jacobsen	absent	Alternates:	
Art Joblin	present	Lindsay Casale	present
Paul Mulligan	present		

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

**RESOLUTIONS:**

**0001-19 for Closed Session to Discuss Personnel Issues:**

On motion of Art Joblin, seconded by Kevin O’Neill, the aforementioned resolution was approved unanimously on roll call vote. The meeting was recessed into closed session at 7:05 PM and reconvened at 7:15 PM.

**REORGANIZATION:**

**Appointment of Chairperson**

Paul Mulligan nominated TJ Belasco for Chairperson. Bob Hewitt seconded the motion which was carried on roll call vote as follows: all members present voting in the affirmative.

**Appointment of Vice Chairperson**

Carol Sabo nominated Lisa Roselli for Vice Chairperson. Paul Mulligan seconded the motion which was carried on roll call vote as follows: all members present voting in the affirmative.

**Appointment of Board Secretary**

On motion of Carol Sabo, seconded by Kevin O’Neill, the board unanimously approved the appointment of Theresa Enteadó as Board Secretary.

**Appointment of Board Engineer**

On motion of Art Joblin, seconded by Lisa Roselli, the board unanimously approved the

appointment of Raymond M. Roberts of Remington & Vernick Engineers as the board engineer.

**Appointment of Board Solicitor**

On motion of Paul Mulligan, seconded by Art Joblin, the board unanimously agreed to table the appointment of board solicitor.

On Motion of Paul Mulligan, seconded by Lisa Roselli, the board approved Resolution No. 0002-19, Authorizing RFP for Combined Board Solicitor on roll call vote as follows: all members present voting in the affirmative.

**Approval of Meeting Dates**

On motion of Carol Sabo, seconded by Art Joblin, the board unanimously approved the meeting dates for 2019.

**Approval of Official Newspapers for Publications**

On motion of Bob Hewitt, seconded by Lindsay Casale, the board unanimously approved the Cape May Star & Wave as the official newspaper and the Press of Atlantic City as the alternate paper.

**Approval of 2018 Annual Report**

On Motion of Art Joblin, seconded by Bob Hewitt, the board approved the 2018 Annual Report on roll call vote as follows: all members present voting in the affirmative.

**MINUTES:**

**December 11, 2018 Regular Meeting**

On motion of Carol Sabo, seconded by Art Joblin, the Minutes of December 11, 2018 Regular Meeting were approved on roll call vote as follows: all members present voting in the affirmative.

**APPLICATIONS:**

**Application 017-18, John Tahan, 412 Second Ave., Block 57, Lot 3.04, New Application - Variance Relief – Substantial Benefit**

Jeffrey Barnes, Esquire appeared on behalf of the applicant and owner of 412 Second Avenue. Mr. Barnes said the lot is 49.23 X 167.5, therefore a total of 8,151 square feet, with two front yards existing on Second Avenue and McCullough Alley. He said the lot is in the R-2 district and there is an existing single family home. Mr. Barnes said the applicant purchased the property on February 1, 2018 and began remodeling work on the interior and exterior, including installing a new fiberglass floor. When he installed posts to create a railing, he was cited due to the need for a height variance. Mr. Barnes described the deck as a pre-existing non-conformity and stated the main concern was the need for height variance, as he felt the lot width and gross floor area were *de minimis* in nature.

Mr. Barnes passed out exhibit binders marked as Tahan Exhibit No. 1, containing photographs of neighboring homes with rooftop decks as well as aerial views.

Mr. John Tahan, applicant and owner of the subject property, as well as Mr. Dante Guzzi, NJ licensed engineer of Dante Guzzi Engineering Associates and project engineer, were both sworn in by the board solicitor.

Mr. Tahan testified that he purchased the property because he loved the area and the house and intends for it to be his family home. He said the previous owner showed him the rooftop deck that was accessed by an existing interior staircase. Mr. Tahan testified that while making many repairs to the house he did not change the footprint, or the building envelope, but he did replace the fiberglass floor in order to create an airtight seal and prevent leaks. He testified that the deck already existed when he purchased the home but he wanted to create a railing higher than the existing two foot wall, for safety reasons. He mentioned his concerns for his children and also the fact that many neighboring properties have rooftop decks. Mr. Tahan said he intended to use white vinyl for the material for the railing.

Mr. Guzzi testified that the applicant requires variances for pre-existing conditions such as lot width where the property is 49.2 feet and 50 is required, maximum gross floor area where 3,695 square feet exists and the maximum is 3,375 square feet, and for accessory building setback where 11.4 square feet exists and a 20 foot front is required. Mr. Guzzi also admitted that a variance for height is required because Borough code states that no porch or deck may be higher than the highest floor. However, he argued that this was a pre-existing condition with the exception of the request to extend the railing to 42 inches. Mr. Guzzi felt the railing would be a customary appurtenance to the existing rooftop deck and not actually require a variance, but said if the Board disagrees, the variance would be warranted because it would advance public safety. Mr. Guzzi further testified that there would be no substantial detriment to the public good by raising a railing one and a half feet above the maximum height standard. He said the railing would not be solid, that it would allow light and air flow and would be aesthetically appealing.

Board Member Lisa Roselli asked if the deck was included in the gross floor area. Mr. Barnes replied that it was not calculated into the total because the definition of gross floor area does not include it.

Board Member Carol Sabo noted that although there may be existing rooftop decks, the code was amended in order to control buildings from getting higher and higher. She wanted to reinforce the intention of the amendment.

Board members questioned if the deck was present on the 2003 plans and asked if the stairway and hatch existed when the applicant purchased the home. Mr. Barnes said the deck was not specifically included but he felt that was because it already existed. Mr. Tahan testified that the stairs, hatch and deck existed when he purchased the home.

Board Engineer Raymond Roberts was sworn in and started his testimony with the definition of gross floor area, since it was questioned earlier. He also said if the rooftop area was originally to serve as a rooftop deck it would have had to meet building code and be at 42 inches and it is not, therefore it is his belief that they do need variance relief for the restriction of rooftop decks. He admitted that interior steps lead to a hatch but said this could have been for roof maintenance to

the roof itself or a unit on the roof. Mr. Roberts's opinion is that the space was never meant to be a rooftop.

Board Member Peter Burke mentioned Philadelphia homes having access to roofs similar to this one but none of them had decks. He noted that there could have been unauthorized work done but didn't think the prior owner used it as a deck.

Board Member Art Joblin commended the applicant on a great job renovating the home. He said he understands the arguments and the intent of the code but he feels a homeowner should be able to install a fiberglass roof and a rail that does not block light or air, in order to enjoy the beautiful views in our community.

The floor was opened to residents within 200 feet and beyond. Mr. Robert Bembry, owner of 416 Second Avenue, was sworn in and testified that he lives next to the subject property and is very pleased with the renovations. He testified that the previous owner invited him up on the deck to smoke cigars and enjoy the view of the ocean several times. He said the owner discussed with him his intent to complete the deck and install a railing. He testified that he had no objection to the application and said if not granted he believes it would create a dangerous condition in the neighborhood.

Norman Roach, Borough Zoning Official, was sworn in and explained that when he cited the applicant he decided not to make him remove the posts for the railing until he came before this board, so as not to create undue hardship for the applicant. He said the previous owner did, at times, do work without proper permit. He also testified that the roof was intended for emergency access only as he remembers.

Board Member Paul Mulligan remembered that the former Zoning Official interpreted decks as structures hanging off the house, not on top of the house as in this case.

Board Member Sabo pointed out that many of the homes on the exhibit provided by the applicant are not in violation because the decks are not higher than the highest floor.

Board Member Art Joblin noted that he does not interpret the application as a deck but rather a walkable surface.

Board Member Bob Hewitt suggested using a wire cable railing rather than vinyl or wood. Board Member Paul Mulligan also said he was going to suggest cable. Board Engineer Roberts reminded the Board that building code requires 4 inch spacing for the railing. He also confirmed that the amendment regarding the prohibition of rooftop decks was effective in 2007.

Chairman Belasco pointed out to the Board, that if approved, whether it be cable or wood railing, and whether they call it a walkable roof, they would still be approving a deck. Board Solicitor Russell agreed and confirmed that this would be approval for a deck.

Board Member Lisa Roselli added that she would love to have a rooftop deck, but the ordinance does not allow it.

In conclusion, Mr. Barnes said he understands the concept of the ordinance and the wish to keep buildings at a certain height. However, he said it is certain that the roof existed prior to his client's purchase of the home and he purchased it with the understanding that it he could use that space. He also said the applicant would be agreeable to a condition that cable railing be used, and that he would not use or store any furniture on the roof. He just wants the space to be safe. Mr. Barnes said if approved, this should not set any type of precedence because this is such a special case, where the deck has already existed for so long.

Solicitor Russell instructed the Board that this would be a motion to approve c variances for a non-conforming rooftop deck, and for height variance, as well as the variances for the pre-existing conditions for lot width, maximum gross floor area, and front yard setback for an accessory structure. Mr. Russell noted the conditions of cable for the railings and no furniture allowed on the roof.

On motion of Paul Mulligan, seconded by Art Joblin, the aforementioned application was approved on roll call vote as follows: Lisa Roselli voting in the negative and all other members present voting in the affirmative.

**Application 019-18, David Von Savage, 9 & 13 Douglas Ave., Block 72, Lots 18.01 & 17, New Application – Minor Subdivision With Variance Relief**

Board Member Paul Mulligan recused himself because he lives within 200 feet of the subject property. A five minute break was observed.

Attorney Anthony Monzo introduced himself, the applicant, and the engineer. He said there was a preliminary issue that he wanted to present concerning whether the grandfathering of the R-2 Zone meant variance relief would not be required. He explained that initially the application did not include variance relief, only minor subdivision and so they did not notice. It was his opinion that this was just a lot line adjustment and the proposed lots would continue to meet the R-2 standards. Mr. Monzo stated that Borough Ordinance 302-01 says; lots that were undersized at the time of the Ordinance change were grandfathered to the R-2 standards. He understands that this Board's Solicitor holds a different opinion, and so, they did notice and are here now to present their case. Mr. Monzo cited case law and land use law.

Solicitor Brock Russell explained his initial concern about variance and jurisdiction. He said it was his opinion that because the lot area and dimensions of the original lots were being changed, those lots would lose their grandfather status and that variances for lot area and dimensions would be required. Mr. Russell read the portion from Ordinance 302-01 that says "it is the intent that the lots existing at the time of the amendment be preserved" in order to receive the benefit of the grandfathering of the R-2 Zone.

The intent of the ordinance, existing lots sizes, the proposed lot sizes as well as the R-2 and R-4 standards, were discussed. Mr. Monzo expressed his confusion with the idea that the lots would not be grandfathered and said the Borough Zoning Official as well as the Board Engineer both agreed that the lots are grandfathered.

At this point Mr. Monzo asked that Mr. Orlando provide some testimony. David Von Savage, owner of the subject properties and Vincent Orlando, P.E., L.P., CME of Engineering Design were both sworn in by Solicitor Russell.

Mr. Orlando suggested that a solution could be, that the Board grant the minor subdivision and impose the R-2 standards as a condition of approval, in essence giving the grandfather status back. Chairman Belasco said the matter at hand is, we have to decide how we hear this case. Solicitor Russell advised the Board to consider this application as a request for variances. He said the suggestion by Mr. Orlando to give them, by way of condition, the benefit of the R-2 standards can also be considered.

For the record, Chairman Belasco asked if the notice was in order, the secretary and solicitor both confirmed that it was.

David Von Savage, of 707 Sunset Boulevard, was sworn in and testified that he is the owner of both lots with contract to sell 13 Douglas. He testified that the new owners want a little more room. He said they have agreed to take trees currently on lot 17 by the property line and move them onto lot 18.01, by the proposed property line. Mr. Von Savage testified that the encroachment of a deck at the rear of 13 Douglas was the reason for granting an easement of 5' X 25' that would be eliminated if the building was damaged or if the property sold. Mr. Von Savage said the new owner is aware of and consents to the easement. He also confirmed a utility easement exists as well.

Vincent Orlando testified that the basis for the relief is C-1, hardship as well as C-2, betterment. He said the variances for lot area, frontage, depth and width meet the C-2 criteria because the benefits outweigh the detriments. Proposed lot 18.01 will have a larger lot size, and the proposal advances the purpose of Borough Ordinance No. 302.01 in that it does not create any new undersized lots, only adjusts the lot line, in order to create two equally sized lots of 75' X 139'. Mr. Orlando testified that there will be no impairment to the zone plan for these reasons as well. He also said there is no detriment to the public good because there is no increase in the number of lots. He said the pre-existing conditions are trivial in nature and asked that the Board grant the grandfathering of the R-2 standards as a condition of approval.

Board Member Art Joblin asked if the Board approves this project would the Board be approving the encroachments. The applicant testified that the encroachments would be removed if sold because they are not easements, but rather a revocable agreement.

Board Solicitor Russell asked that the agreement be provided to the Board professionals for their review and approval and Mr. Monzo agreed.

Board Engineer, Raymond Roberts, was sworn in. He said the applicant's map suggests an accessory building in the rear. Mr. Monzo explained that the structure was connected by a common roof to the house and therefore not an accessory. Mr. Roberts agreed this would eliminate the need for variance from maximum floor area ratio. Mr. Roberts testified that he does not oppose to the waivers from the subdivision checklist that were being sought with the exception of number 1, elevations for lot 17 and number 6, the landscape and vegetation plan. He said the landscape and vegetation plan must be submitted when seeking construction permits.

Mr. Roberts also added a grading plan would be required at that time as well. He said if the monuments are set after the subdivision map is recorded a bond would be required.

Board Member Art Joblin said currently there are 2 buildable lots under the R-2 standards and asked if approved, would there still be 2 buildable lots under the R-2 standards. This was confirmed to be true, by the Board Solicitor.

The floor was opened to residents within 200 feet and beyond. Paul Mulligan, of 163 Stevens Street, spoke as a member within 200 feet of the property and testified that he is in favor of the application.

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

Board Solicitor Brock Russell advised the Board this would be minor subdivision approval together with variance relief. He said both lots require variance for lot frontage, lot width, lot depth, lot area, front yard setback and maximum lot coverage. He said this will be subject to all conditions noted in Mr. Roberts' review letter as well as those made during testimony, and any other required outside approvals.

On motion of Art Joblin, seconded by Lisa Roselli, the aforementioned application was approved on roll call vote as follows: all members present voting in the affirmative.

**Application 020-18, West Sunset Retail LLC, 110 Sunset Blvd., Block 32, Lot 3, New Application – Amended Preliminary Major Site Plan**

Attorney Anthony Monzo appeared on behalf of the applicants. He reminded the Board that they previously granted this applicant preliminary and final major site plan approval in 2015. He stated this approving resolution number 18-15 was extended in 2017. Mr. Monzo said the approval was for the construction of an administration building, a restaurant, a retail store and a gas station. He said the amended approval being sought is to allow the convenient store and the reconfiguration of the gas pumps to be completed at a later time.

It was confirmed for the record that notice and advertisement were properly completed. Vincent Orlando, PE, PP, CME and Robert Shepanski, project manager were both sworn in.

Mr. Shepanski testified that the retail building and the restaurant have been completed and this area is noted on the plans as the Exit Zero Headquarters. He said much of the site work has been completed however they have not yet built the convenience store that was to be located under the canopy nor have they removed the pumps. He testified that the reason is just a planning issue. Mr. Shepanski said that notes in Mr. Roberts' review letter were regarding outdoor seating which created an increased parking requirement. He said Mr. Roberts noted the outdoor seating was also possibly obstructing the right-of-way. Mr. Shepanski testified that the two tables and eight chairs on First Avenue have been removed. Board Member Sabo asked if the removal was temporary. Mr. Shepanski testified that the tables and chairs on First will not be coming back but that the four tables and sixteen chairs in front of the building are weather permitting. Mr. Shepanski testified that the outdoor seating in front of the building were previously approved.

Chairman Belasco disagreed. Mr. Orlando testified that Mr. Belasco was correct and the outdoor seating was not part of the approval. It was agreed that those seats are additional and would create the need for additional parking and would be required to be shown on the revised plan.

Mr. Monzo said the 56 seats that are approved will be maintained.

Mr. Orlando testified that the applicant seeks to bifurcate the application into two phases. He said phase one would consist of the improvement to the headquarters and restaurant. Phase two would consist of a new canopy for the gas pumps and a convenience store. Mr. Orlando testified the applicant would like to reconfigure some of the parking spaces by providing 14 parking spaces instead of the 15 that were approved. He said they would also need to amend the plan to allow a storage bin and wood panel for the pumps. He also testified that the applicant planted shrubbery within the right-of-way along Sunset Boulevard which will require County approval. Mr. Orlando added that the applicant will also need Borough approval for the shrubs in the First Avenue right-of-way. Regarding Mr. Roberts' review letter and the storm water management recommendations made in that letter, Mr. Orlando testified that the applicant will comply. Mr. Orlando admitted that the handicapped handrail does slightly encroach on Sunset Boulevard and that the curb line shown on the original plan was replaced with bumper stops. He also noted that building mounted signs have been used even though pole mounted signs were approved. Mr. Orlando understands the parking requirements and said that since the applicant is providing 14 spaces for 56 seats, the applicant will require a variance for parking. He testified there is no detriment to the public good because many customers travel by foot or bike. He mentioned that the applicant will be providing a bike rack to accommodate such traffic. Orlando confirmed that the parking spaces were angled at 45 degrees instead of the 60 that was approved, but testified that it was a necessity for safety.

Mayor Sabo asked if the applicant was planning to go to two pumps as previously indicated. Mr. Shepanski said that is not financially feasible at this time but he would like to preserve the right to do so in the future if wanted.

Chairman Belasco asked how the timing for phase two would be handled. Mr. Monzo said municipal land use law states two years for a final approval and allows 3 one year extensions and for preliminary approval the applicant would have three years.

The applicant agreed to contribute \$5,000.00 to the Borough's Parking Fund as a way to help justify the variance for one parking space.

Mr. Raymond Roberts, Board Engineer was sworn in clarified for the record that the applicant was seeking a reduction in the number of parking spaces that was previously approved by one space. He also testified that the curb stops instead of the concrete curb was acceptable and so is the use of the crushed stone instead of paved concrete. He recommended a formal easement for the encroachment of the ADA ramp and handrail into the right-of-way. The applicant agreed to comply. Mr. Roberts said the applicants will need to provide revised drainage calculations. He also said the Board of Commissioners must agree to the encroachment of the shrubs along First Avenue. Mr. Roberts said the lights were reduced from 18 to 11. He advised the Board that the applicant has not presented any exceptional changes other than the drainage.

Board Member Lisa Roselli asked about the number of signs. Mr. Roberts said the applicants were approved for 9 signs but they are now seeking approval for 10. Mr. Roberts also asked why the building was built larger than what was approved. Mr. Shepanski answered that an additional two feet was added in the rear of the building but was still compliant. He said a curb was eliminated in the parking area.

Board Member Art Joblin asked if Mr. Roberts felt the drainage was adequate. Mr. Roberts indicated that a condition of the approval will be that the applicant must submit drainage calculations to him for approval.

Board Member Paul Mulligan suggested that the Board only grant preliminary approval so that it could see the revisions to the plan prior to granting final approval.

The floor was opened to residents within 200 feet and beyond. Laura Mowrey, owner of 404 Fow Avenue testified that her property is next to the gas station. She wanted the Board to explain how the applicant is allowed to deviate from the approved plans. Mr. Roberts explained that regulations include a process to submit an amended site plan, and an amended site plan includes changes made to something that has been approved prior. Mr. Roberts further explained that the applicant has posted a performance bond which will not be released until they meet all the requirements that are established by this amended site plan. He said this Board can and will decide if the changes are acceptable or not. Solicitor Russell also responded and said the Board approved a plan, the applicant did the work, the Board Engineer completed a site investigation, he looked at what was approved and what was built and he noted the changes. And so the applicant is here now, and is trying to remedy this. Ms. Mowery still expressed her frustration with the process. She requested that the traffic signage be corrected to indicate “one way” and “do not enter” where applicable. Ms. Mowery also requested that the bollards that were approved be installed. The applicant was agreeable to a condition to revise their plan to show traffic directional signage, and to show the installation of the bollards, both subject to the review and approval of the Board Engineer.

Norman Roach, Zoning Officer, questioned whether a final Certificate of Occupancy has been issued and how long a Temporary Certificate of Occupancy could continue. It was confirmed that the TCO could be extended, as needed, until the final site plan is approved. The applicant agreed to the condition that revised plans be submitted within 30 days.

Solicitor Russell advised the Board this would be preliminary approval only, for amended major site plan, together with variances for parking and signage. This will be subject to all comments and recommendations contained in the Board Engineers report, as well as all conditions made and agreed to, during testimony, along with any other outside approvals necessary.

On motion of Paul Mulligan, seconded by Art Joblin, the aforementioned application was approved on roll call vote as follows: all members present voting in the affirmative.

**PRIVILEGE OF THE FLOOR:**

When no one wished to speak, the meeting was adjourned at approximately 10:45 PM carried by unanimous voice vote.

Respectfully submitted,

Theresa Enteadó  
Board Secretary