

**BOROUGH OF WEST CAPE MAY  
PLANNING-ZONING BOARD  
REGULAR MEETING – FEBRUARY 4, 2020**

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 Chair 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:**

|               |         |                           |         |
|---------------|---------|---------------------------|---------|
| Art Joblin    | absent  | Peter Burke               | present |
| Bob Hewitt    | present | Carol Sabo                | present |
| Kevin O’Neill | present | TJ Belasco                | present |
| Jim Barnes    | present | <b><u>Alternates:</u></b> |         |
| Lisa Roselli  | present | Deanna Kurkowski          | present |
| Paul Mulligan | present | Allison Morgan            | present |

**Also Present:**

Raymond Roberts, Board Engineer  
Richard M. King Jr., Board Solicitor  
Theresa Entead, Board Secretary

**MINUTES:**

**January 21, 2020 Regular Meeting**

On motion of Paul Mulligan, seconded by Kevin O’Neill, the Minutes of January 21, 2020 Regular Meeting were approved on roll call vote as follows: all members present voting in the affirmative.

**APPLICATIONS:**

**Application 010-19, Chad Desatnick, Sixth Ave., Block 55, Lots 24 & 23.04, New Application (tabled from last meeting) – Variance Relief – Hardship & Substantial Benefit**

Board Member O’Neill announced he had to be recused. Attorney Andrew Catanese introduced himself, Chad Desatnick, the applicant, and Vincent Orlando, the project engineer. He said as a result of discussions with his neighbor, Matt Notch, during the first hearing of this application, Mr. Desatnick wanted to be responsive to the concerns for the preservation of trees. He said after the Board suggested the application be submitted as a subdivision, the application was revised as a minor subdivision with a passage way on the property, designed to save all but one tree. Mr. Catanese asked if new board members would be voting. It was agreed that since the application has been revised from an easement to a minor subdivision, it could be heard as a

new application with the members present participating and voting.

Vince Orlando, Chad DeSatnick, and Board Engineer Ray Roberts were sworn in by Board Solicitor King. Mr. Orlando said after visiting the site he felt the better solution would be to apply for a subdivision so that the property at lot 24 would have access to Mechanic Street. He said the plan before the Board is a minor subdivision with variances for lot frontage and lot width for both lots. The 30 foot measurement for the access road was chosen after some on-site measurements and in an effort to preserve as many trees and vegetation as possible. He said only one 16 inch diameter tree is proposed for removal. A review of this tree by Arbor Care deeming the tree in poor condition was introduced as exhibit A-1. Mr. Orlando went on to describe materials and the measurements of the access road. He presented the C-1 hardship criteria, argued there would be no detriment and presented benefits to the zone. Mr. Catanese pointed out that without some variance relief, lot 24 would be rendered useless. The Board asked if the Fire Department was consulted. Mr. Orlando testified that Chief McPherson did approve the access road regarding emergency vehicle access and turn around ability.

Board Engineer Roberts confirmed that variance relief is required for lot width and frontage, for both lots. He has no objection to the waivers requested. Mr. Roberts asked if the applicant has had any conversations with the Shade Tree Commission in light of the many concerns from the last meeting about vehicles being parked and driven close to trees, and on top of the root systems. Mr. Orlando said in addition to being a licensed engineer and planner, he is also a licensed landscape architect. He reviewed the site and all the trees and testified that the gravel access road is far enough away from them and their root systems. He said vehicle traffic will not have a negative impact on the trees. Engineer Roberts asked about the relocation of the sheds and a gazebo. Mr. Orlando answered that the applicant will work with his neighbor on the relocation of the sheds and the gazebo. They will be relocated prior to filing, they will comply with the minimum side yard setbacks, and the new locations would be shown on the final submission to be approved by Mr. Roberts. Mr. Orlando testified that the monuments would also be set prior to filing. The applicant was agreeable to indicate accurately on the final plans that the existing driveway will be removed. The Board asked about one driveway versus two. Engineer Roberts advised there is no engineering rule, but plans usually attempt to keep multiple driveways as far apart as possible. He said the applicant has proposed the most appropriate way considering the shortened frontages.

The floor was opened to residents within 200 feet of the subject property. Matt Notch of 291 Sixth Avenue was sworn in and testified that at the last meeting he had concerns about the clear cutting involved with the easement that was proposed, as well as the proximity of it to his property. He admitted that the applicant has done everything he can to work with him, to move the access over, and to save as many trees as possible. He said he was very happy with the new direction of the application and very pleased they were able to sit down and discuss a favorable outcome for all.

When no one else expressed a desire to speak, the public portion was closed. Mr. Catanese summarized by saying the proposal is a reasonable use for a land-locked lot and by thanking the Board. Solicitor King commended Mr. Desatnick on his efforts with the revision.

Solicitor King advised the Board this will be a motion to approve application for minor

subdivision with variances for lot width and frontage, subject to all recommendations and conditions noted in Mr. Roberts' review letter as well as those made during testimony, and any other required outside approvals.

On motion of Carol Sabo, seconded by Paul Mulligan, the aforementioned application was approved on roll call vote as follows: Bob Hewitt, Jim Barnes, Lisa Roselli, Paul Mulligan, Peter Burke, Carol Sabo, Deanna Kurkowski, Allison Morgan, and TJ Belasco voting in the affirmative.

**Application 017-19, Eileen & William McDonald, 141 Eldredge Ave., Block 8, Lot 18, New Application – Variance Relief – Hardship & Substantial Benefit**

Attorney for the applicant is Ron Gelzunas, he said the property is occupied by an 1875 farmhouse with existing conditions to the rear, and an existing detached garage. The applicant proposes to reconstruct the front porch into an open covered porch. It will be extended across the entire front of the building along Eldredge, which will require front and side yard variance relief. The rear will be squared off with additions and will comply with zoning ordinance. Mr. Gelzunas introduced James McAfee of McAfee Architects and the applicant Eileen McDonald and they were both sworn in by Solicitor King.

Mr. McAfee testified that the front of the existing home, is the historic portion of the dwelling. He said there was an addition to the rear, most likely done in the early 80's and the applicant wants to salvage as much of that as possible, structurally. However, the new addition will encompass that and will increase the area. On the Eldredge Avenue side, they are removing a sunroom that was probably an addition done in the 70's, and proposing an open front porch that will extend from side to side. The front yard setback is non-conforming and will remain the same. The rear portion addition is mostly on the east side, and consists of a covered porch and second floor. They are also proposing a detached garage on the east side, rear of the property that conforms to all of the setbacks. The side yard setbacks for the proposed addition are conforming, the existing building has a 2.3 side yard setback that will remain. The new front porch will have the same non-conforming setback. Mr. McAfee testified that a lot of repair is required. A new foundation will be needed in the rear, and vinyl windows and cedar shake siding will be removed. The hope is to restore the original siding that exists underneath the cedar shake siding. The open porch design will promote open air, light, and space in the front of the property. This is consistent with many houses in the neighborhood and the HPC was very much in favor of the open front porch. Mr. McAfee also testified there is no negative impact to the adjacent properties or the neighborhood in general, and no detriment to the zoning plan. He said the detached garage on Mechanic Street is an accessory structure, however it will meet all the principle building setbacks. This provides adequate buffer for neighboring homes.

Solicitor King and Engineer Roberts discussed a conflict with the code regarding garages and front yards. Mr. Gelzunas would prefer to treat the garage as a principal structure regarding setbacks so that the most stringent requirements have been requested.

Mr. McAfee went on to discuss additional comments in the engineer report. He said the applicant intends to submit a grading plan and a storm water system that will show no run-off onto neighboring properties. There will be four conforming parking spaces, two in the garage

and two in the front of the garage. Mr. McAfee testified that this satisfies the parking requirements, even if only counted as three per RSIS, and the location will be indicated on the final plans. He said there will also be an exterior lighting plan, with all lights being downward facing lights. Two HVAC units will be located on the west side of the building near the proposed exterior shower and will be within the minimum setback. The applicant understands the placement of the HVAC units must comply and must be indicated on the final plans.

Engineer Roberts discussed the side yard setbacks on the east side of the building, at the location of the addition. He said it measures 9.92 feet on one side and less than 6 feet on the other side. He recommends that even though very small it still requires a variance. He is satisfied with the applicant's testimony otherwise. The applicant agreed to adjust the dimension to 10 feet not 9.92 for the Board's satisfaction.

The floor was opened to residents within 200 feet of the subject property and then to those outside 200 feet. When no one expressed a desire to speak the public portion was closed.

Solicitor King said considering the project as a whole, this will be a motion to grant variances consistent with the engineer's report including lot frontage and width which are existing, front yard setback and each side yard setback, as well as the setback for the garage. To be subject to all recommendations and conditions noted in Mr. Roberts' review letter as well as those made during testimony, and any other required outside approvals.

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

**Application 015-19, Eileen & William McDonald, 141 Eldredge Ave., Block 8, Lot 18, New Application – HPC Appeal**

Solicitor King advised the Board that an appeal of an HPC is a different standard. The Board has to look at the record and then decide if the HPC acted arbitrarily or capriciously. The Board does not substitute their vote or how they would have voted, for the HPC's, rather they only decide if the HPC voted in a suitable manner that is not arbitrary or capricious. The HPC has the specialized knowledge and expertise. They have a certain expectation that you, the Board, will recognize this and affirm their decision as long as they did not act in an arbitrary or capricious manner.

Mr. Ron Gelzunas agreed that this standard is appropriate, but he added that he could argue the standing of the HPC being advisory only. Solicitor King argued the Borough's HPC is not advisory only, they are a strong board with decision making authority. Moving on, Mr. Gelzunas said the Board was provided with a copy of the transcript, and the application to the HPC. The testimony of Ms. McDonald and Mr. McAfee has been captured in the transcript. Mr. Gelzunas said two conditions of the approval are being appealed. The requirement to use wood siding and wood windows on the addition to the rear of the original structure. The applicant understands that the HPC provides a valuable service to the community. Mr. Gelzunas said the applicant respects this, and only wishes to voice disagreement with what the HPC chair called

their policy as stated at the hearing. The successful efforts of the HPC to protect and preserve the history is what brought the McDonalds to the historic district. They agree the structure should be restored to its original condition and are willing to do so. The appeal only pertains to the addition to the rear of the property that has had various modifications through the years.

Mr. Gelzunas read from section 4-1 in the 2019 edition of municipal land use law by William M. Cox. He said there is no discussion in the book, of the requirement to recreate historic buildings with the use of actual materials used in the periods in question. Mr. Gelzunas also read from the HPC guidelines, “cement board (e.g. Hardie Plank) artificial siding may be appropriate for new additions to key and contributing buildings”. He continued reading other details about cement board. He feels the HPC guidelines do not support the testimony by the HPC chairman wherein he stated cement type siding is never approved for primary structures. The proposed material for siding on the addition in the rear, is the exact material listed in the HPC guidelines. The west side of the building, where the addition is proposed, can hardly be seen from Eldredge Avenue, and it will be further blocked by the proposed detached garage. Mr. Gelzunas feels there should have been more consideration and weighing of all the details when making their decision. It is his opinion that the use of non-wood substitute materials, as noted in the HPC guidelines, should be permitted under limited circumstances such as, additions to the rear of original structures. More affordable methods of renovation, restoration, and maintenance should be encouraged for homeowners who live in the Borough.

Solicitor King expressed some concerns. First, he discussed conflict of interest and voting eligibility. Second, he discussed the statement made by the Chair that the HPC will approve modern materials to ancillary buildings on the site but not to primary buildings or for additions to primary buildings. He said this statement is in conflict with borough ordinance that reads “cement board (e.g. Hardie Plank) artificial siding may be appropriate for new additions to key and contributing buildings”. Solicitor King offers no opinion on whether or not using cement board is appropriate in this case or not, he only knows that the policy stated at the hearing and contained in the transcript is not the policy stated in the ordinance. Third, he mentioned the discussion at the hearing about a prior applicant who was granted approval to use cement board on an addition. Solicitor King recommends the application be remanded back to the HPC with the direction that the chair not vote, and they not use the absolute statement made by the chair that instead, they use the standard in the guidelines and consider the size and scale of the addition and the location and weigh the factors.

Attorney Gelzunas said the applicant researched the borough historic district with diligence. She looked at many properties in the historic district, she spoke to builders and property owners, and read the HPC guidelines, and she concluded that there would be some flexibility with materials. He said if the policy of the HPC is to allow flexibility like the guidelines state, then the HPC should consider other materials and not have the hard no, response, that only wood can be used. If they want to say other materials are never allowed, only wood can be used, then the guidelines should be amended to support that. Mr. Gelzunas feels to remand this back to the HPC for them to just say the materials are not allowed again will be hollow. He would like the HPC to be directed to actually consider other options.

Solicitor King advised the Board that they can make a motion to uphold the HPC

decision, a motion to reverse the HPC, or a motion to remand it back with direction.

On motion of Paul Mulligan, seconded by Bob Hewitt, the decision to remand the application back to the HPC with direction, was approved on roll call vote as follows: Bob Hewitt, Jim Barnes, Kevin O'Neill, Lisa Roselli, Paul Mulligan, Carol Sabo, Deanna Kurkowski, and TJ Belasco voting in the affirmative and Peter Burke abstaining.

### **PRIVILEGE OF THE FLOOR:**

There was a brief discussion about the rules of abstention.

When no one wished to speak, the meeting was adjourned at approximately 9:24 PM carried by unanimous voice vote.

Respectfully submitted,

Theresa Enteadó  
Board Secretary