

**OCEANPORT PLANNING BOARD
MINUTES
December 12, 2017**

Vice Chairman Whitson called the meeting to order at 7:30 p.m. and gave the Statement of Compliance with the Open Public Meetings Act: "Adequate notice of this meeting has been provided by notice to the Asbury Park Press and The Link News on January 11, 2017 and by the posting of same on the municipal bulletin board and Borough Web Site."

Vice Chairman Whitson led the flag salute.

MEMBERS PRESENT: Mr. Sullivan, Councilwoman Cooper, Mr. Kleiberg, Mr. Kahle, Ms. Halpern, Mr. Whitson

MEMBERS ABSENT: Mr. Foster, Mr. Savarese, Mr. Fichter, Mr. Widdis

OFFICIALS PRESENT: Jeanne Smith, Board Secretary, Rick DeNoia, Esq., Board Attorney, Board Engineer/Planner William White

BOARD BUSINESS:

1. Minutes of the meeting of November 28, 2017 were approved as presented on a motion from Mr. Kleiberg and a second from Ms. Halpern and approved by the eligible Board members.

OLD BUSINESS:

1. PB2017-18 Diamante, Genevieve
169 Comanche Drive
Block 41, Lot 2
Request for variance from Flood Damage Prevention Ordinance

The following individuals were sworn: William White, Board Engineer/Planner and Genevieve Diamante, Applicant/Owner. Mr. DeNoia stated for the record that service had been reviewed, was in order and the Board accepted jurisdiction.

Ms. Diamante explained that her furnace was installed after superstorm Sandy, which at the time was in compliance with height requirements. The furnace is at 10.85' and new flood maps show that the height will be lowered to 11.4. Mr. White explained that the Design Flood Elevation in that area is 12.4 and the furnace was installed at 10.85'. He stated the entire house is in compliance with the exception of the furnace. Mr. White read pertinent portions of the Flood Damage Prevention Ordinance and opined that it would not affect neighbors. There was discussion regarding conditions of approval regarding increased flood insurance rates and protecting the Borough from liability.

Vice Chairman Whitson asked for questions from the Board. Ms. Halpern asked how the lapse occurred. Mr. White explained that inspection procedures have been amended to address this type of problem.

PUBLIC:

Vice Chairman Whitson opened the meeting to the public for questions for this witness only. As there was no one from the public who appeared to be heard, Vice Chairman Whitson closed that portion of the hearing.

Vice Chairman Whitson opened the meeting to the public for statements on the application. As there was no one from the public who appeared to be heard, Vice Chairman Whitson closed that portion of the hearing.

Mr. Kleiberg made a motion to approve the application for relief from the Flood Damage Prevention

Ordinance requirement for elevation of mechanical equipment at elevation of 10.85' where 12.4' was required subject to the conditions that the Borough would be held harmless from any liability if there was damage due to the approval and that the Applicant was aware of the possibility of an increase in flood insurance premiums, which was seconded by Ms. Halpern and received the following roll call:

AYES: Mr. Sullivan, Councilwoman Cooper, Mr. Kleiberg, Mr. Kahle, Ms. Halpern, Mr. Whitson
NAYES: None
ABSTAIN: None
ABSENT: Mr. Foster, Mr. Savarese, Mr. Fichter, Mr. Widdis

Ms. Smith stated the motion carried.

NEW BUSINESS:

2. PB2017-02 Brown, Peter **CARRIED from July 11, 2017**
93 Main Street
Block 110, Lot 6
Request for Bulk Variances and Expansion of Non-conforming Use

Vice Chairman Whitson advised the public that this matter would not be heard this evening and would be carried to the January 9, 2018 meeting with no additional notice required as only 4 members of the Board eligible to hear this D-use variance were present and a minimum of 5 members is required.

3. PB2017-09.1 Fiore, Joseph
43 Werah Place
Block 56, Lot 6
Request for bulk variances for construction of new house

A-1 Aerial Photograph entitled "Werah Place, Boundary Exhibit" prepared by MidAtlantic Engineering Partners, dated July 11, 2017.

Albert Rescinio, Esq. and Eric Mueller, Esq., Attorneys for the Applicant appeared on behalf of Applicant Joseph Fiore. Mr. DeNoia stated service had been reviewed, was in order and the Board has jurisdiction.

Mr. Rescinio advised that the Applicant is seeking 2 C-1 and 1 C-2. He explained that three 25' lots were sold as a 75' block in 1949 and have been maintained that way since. Neighboring lots on Werah Pl. and Manitto Pl. are also undersized. Vice Chairman Whitson asked Mr. Rescinio to address the issue of res judicata. Mr. DeNoia explained that there were previous applications which were denied. The concept is that the same application may not be heard twice and asked Mr. Rescinio to explain the differences between this application and the previous. Mr. Rescinio stated this application is substantially different, except for the lot width and area. This application does not request the combined minimum yard setback, maximum building coverage area. The footprint has been reduced. Mr. DeNoia stated there was not a res judicata issue.

Mr. Rescinio introduced Kevin Shelly, Engineer for the Applicant, who was sworn in, and having previously appeared before the Board, was accepted as an expert in the field of engineering. Mr. Shelly testified that the Applicant is proposing a 2 story single family dwelling with an 1875 sq. ft. footprint. He explained proposed details such as a covered front porch, raised, detached rear deck, asphalt driveway, raised air conditioning and generator pads, fencing and runoff being redirected towards Werah Pl. Mr. Shelly discussed front yard setbacks, minimum lot area, lot width. He introduced and described **Exhibit A-1**. He explained there are currently 39 non-conforming lots in the area, including this lot. The revisions address the comments made in Mr. White's 10/10/17 letter. Mr. White stated that he updated his comments based on the revisions. He discussed drainage and noted that a berm had been requested in order to protect an adjacent property. Mr. Shelly will revise the plans to ensure that there is a well-defined berm along both property sides. Mr. White stated the Design Flood Elevation

(DFE) is 11.4 in an AE-9 zone, and Mr. Shelly will revise the plans to reflect that.

Councilwoman Cooper asked about the non-conforming lots in the area. Mr. Shelly replied the lot sizes vary, but are all non-conforming. Ms. Halpern asked about the detached deck. Mr. Shelly stated the free-standing deck is not classified as part of building coverage. Ms. Halpern asked if fencing changed anything relation to the setback, which Mr. Shelly stated it would not. Mr. Kahle also asked how many of the identified non-conforming lots were approximately 8,000 sq. ft. Mr. Shelly pointed out the various lots and sizes. He identified 13 lots that are 7500 sq. ft. or less. Mr. Kahle asked for the front setbacks of the properties on either side of the Applicant's lot. Mr. Shelly advised that 38 Werah Pl. was 28.26 ft. and 46 Werah Pl. is 24.7 ft. The Applicant is requesting 26.6 ft. Mr. Kahle asked for more information about the elevation in rear of the property and the yard inlet. Mr. Shelly explained the direction of the water flow to the yard inlet. Mr. Kleiberg asked about the 3 air conditioning units. Mr. Shelly stated there were 2 A/C units and one generator. The third A/C will be removed from the plans. Mr. Kleiberg stated the detached deck is an accessory structure and should not be part of the application. Mr. White stated the deck is permitted as an accessory structure since the Applicant is within 5% for accessory structures. Vice Chairman asked for the number of conforming lots. Mr. Shelly said approximately 50.

PUBLIC:

Vice Chairman Whitson opened the meeting to the public for questions for this witness only.

Beth Cameron, 43 Manitto Place, was sworn and asked if the Applicant planned to tie into the inlet in her backyard for water runoff. Mr. Shelly responded there were no plans to tie into the inlet, all water was being directed to Werah Place. Mr. Shelly advised that the berms would ensure than any runoff would not be sent to neighboring properties. Mr. White stated that based on the plans, there would be an insignificant reduction. Mr. Kahle expressed a desire to have drains put in the rear or a dry well to eliminate runoff to Ms. Cameron's property. Mr. White stated that since the elevation is a 7', digging down an additional 2' would result in hitting groundwater. Ms. Cameron stated she was somewhat satisfied.

Stuart Briskey, 46 Werah Place, asked questions related to the footprint on the lot including how many 75' lots have a 3400 sq. ft. home on them, how many of them are 2-stories, and setbacks. Mr. Briskey asked if drainage to another property without permission was allowable. Mr. Shelly advised there were no proposed changes to the existing drainage.

As there was no one else from the public who appeared to be heard, Vice Chairman Whitson closed that portion of the hearing.

Christine Cofone, Professional Planner for the Applicant, was sworn in, presented her qualifications and having previously appeared before the Board, was accepted as an expert in planning.

Ms. Cofone stated the Applicant is requesting 3 variances. She advised that lot area of 7500, where 12,000 is required; lot width of 75 feet where 120 is required are C-1 hardship variances. She referred to **A-1** which shows other non-conforming lots in the area. This lot exists as a non-conforming lot. Without the variance relief, the lot will not be usable. Properties on either side are developed, and there is no way for the Applicant to cure his lot area deficiencies. The remaining variance request is for front yard setback, required is 30', proposed is 26.6'. The average front setback of properties within 200' was determined to be 26.6'. The proposal is in conformity with the character of the area. The benefits are more usable yard area, better distance to the rear yard property owner and creates additional light, air and open space. She stated the Board should approve it as a C-2 variance. The application is consistent with criteria G, I and M of the Land Use Law. There are no substantial detriments.

PUBLIC: Vice Chairman Whitson opened the meeting to the public for questions for this witness only.

Stuart Briskey, 46 Werah Place, asked how the Applicant didn't cause his own hardship by dividing the lot. Mr. Rescinio objected to question, stating that the Board did not have jurisdiction. Mr. DeNoia stated that the Board is responsible for reviewing the application before it. Prior history and ownership is not

part of the application.

As there was no one else from the public who appeared to be heard, Vice Chairman Whitson closed that portion of the hearing.

Jamie Pavlis, Licensed Real Estate Broker and Appraiser, was sworn in, presented his qualifications and having appeared before the Board previously was accepted as a real estate expert and an expert appraiser.

Mr. Pavlis provided testimony associated with the real estate trends in both the neighborhood and Oceanport overall. Older homes have been updated, expanded upon and remodeled. The neighborhood where the proposed building sits is well maintained and well established single-family homes. He stated there were 9 improved lots on the north side of Werah, and 7 are undersized. On the other side, there are 7 improved lots, where 4 are undersized. On Manitto Pl., all 6 improved lots are undersized. He provided details for undersized lots. He testified the proposed 2 story colonial building will fit in well with the neighborhood and the proposed square footage would be typical for the neighborhood.

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Councilwoman Cooper asked about the height of the fence. Mr. Shelly advised the fence would be a 6' vinyl fence. Councilwoman Cooper asked about the height of the garage. Mr. Shelly advised 8 or 9'. She asked about the rear setback. Mr. Shelly stated it was 31.4'. She expressed concern about the visual impact of the garage. Mr. Shelly advised the plans are conceptual and that the Applicant had spoken to the neighbor regarding the garage door. There was discussion regarding the conceptual nature of the plans and that anything that would change would not impact the variance requests.

Vice Chairman Whitson opened the meeting to the public for statements on the application.

Stuart Briskey, 46 Werah Place, appeared and made statements regarding his concerns regarding setbacks. He objected to the average frontage. He stated there are no 2 story dwellings on the south side of Werah Pl. from Itaska to Shrewsbury Ave. He stated this house would stick out like a sore thumb. It's 12' higher than his own house, which is at the proper flood plain. He outlined the differences between cape style houses and colonials. This proposal is totally out of character. He stated the water going to the rear is going to be a problem. Mr. Briskey stated the Fiore company installed a drain. He asked Mr. White if water can be drained 10'. Mr. White stated that properties between Comanche and Port Au Peck all drain to neighbors' yards. Mr. Briskey asked where the rear downspouts would be directed. Mr. White stated he asked Mr. Shelly for clarification who stated the front and rear downspouts would be directed to Werah Pl.

Beth Cameron, 43 Manitto Place, stated concerns regarding the garage door and the possibility of cars or boats in the back yard and wants that included in the variance. She asked for some type of separation between her property and the Applicant's. She confirmed that the Applicant spoke to her and advised he was not going to put in a garage door.

As there was no one from the public who appeared to be heard, Vice Chairman Whitson closed that portion of the hearing.

Mr. Mueller gave closing remarks by summarizing the application, the variances being requested, and outlined the standard for granting variances. He stated that without the variances, the property is unusable. He provided the history of the existence of the lot. Mr. Mueller summarized the position of the Applicant's professionals and the benefits of granting the variances to allow the building to be built. Mr. Rescinio stated the Applicant's professionals have proven that the Applicant meets the standards for positive and negative criteria. Mr. Rescinio stated that Ms. Cameron's concerns have been addressed

and will continue to be addressed. However, he stated that Mr. Briskey gave unsupported opinion in opposition to the Application. Mr. Rescinio requested that the variances be approved based.

Mr. Kahle asked if the Applicant could put rear yard drains to empty to the neighbor's drain. Mr. White had no knowledge of Ms. Cameron's drainage system. Mr. Rescinio stated that the testimony indicated that there would not be an increase in the water flow to Ms. Cameron's property. Mr. White cautioned the Board that an easement would be required. Councilwoman Cooper asked for the exact square footage. Again, they are conceptual drawings, but approximately between 2400 and 2200 sq. ft.

Mr. Sullivan made a motion to approve the application for relief from lot width of 75' where 120' required, lot area of 7,500 where 12,000 sq. ft., required and front yard setback of 26.6' where 30' required which was seconded by Mr. Whitson and received the following roll call:

AYES: Mr. Sullivan, Mr. Kleiberg, Mr. Kahle, Mr. Whitson
NAYES: Councilwoman Cooper, Ms. Halpern
ABSTAIN: None
ABSENT: Mr. Foster, Mr. Savarese, Mr. Fichter, Mr. Widdis

Ms. Smith stated the motion carried.

RESOLUTIONS:

4. PR-17-25 Lane, Raymond - Mr. DeNoia summarized the Resolution after which Mr. Kahle made a motion to approve the resolution which was seconded by Mr. Kleiberg and received the following roll call:

AYES: Mr. Sullivan, Councilwoman Cooper, Mr. Kleiberg, Mr. Kahle, Mr. Whitson
NAYES: None
ABSTAIN: None
ABSENT: Mr. Foster, Mr. Savarese, Mr. Fichter, Mr. Widdis
INELIGIBLE: Ms. Halpern

Ms. Smith stated the motion carried.

5. PR-17-26 Zolofra, Mario - Mr. DeNoia summarized the Resolution after which Mr. Kahle made a motion to approve the resolution which was seconded by Mr. Kleiberg and received the following roll call:

AYES: Mr. Sullivan, Councilwoman Cooper, Mr. Kleiberg, Mr. Kahle, Mr. Whitson
NAYES: None
ABSTAIN: None
ABSENT: Mr. Foster, Mr. Savarese, Mr. Fichter, Mr. Widdis
INELIGIBLE: Ms. Halpern

Ms. Smith stated the motion carried.

PETITIONS FROM THE PUBLIC: Vice Chairman Whitson opened the meeting to Petitions from the Public. As no one from the public wished to be heard, Vice Chairman Whitson closed that portion of the meeting.

ADJOURNMENT: As there was no further business, the meeting was adjourned at 9:18 p.m. on a motion by Mr. Kahle which was seconded by Mr. Sullivan and approved by the Board.

Respectfully submitted,

JEANNE SMITH
Secretary