

**OCEANPORT PLANNING BOARD
MINUTES
December 8, 2010**

Chairman Widdis called the meeting to order at 7:30 p.m. and announced that the meeting had been advertised in accordance with the Open Public Meetings Act.

Chairman Widdis led the flag salute.

MEMBERS PRESENT: Mr. Ibex, Mr. McCarthy, Councilman Bertekap, Mr. Kleiberg, Mr. Fichter, Mr. Whitson, Mr. Widdis

MEMBERS ABSENT: Mr. Gervolino, Mr. Savarese, Mr. Sullivan, Ms. Flor

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

BOARD BUSINESS:

1. Minutes of the meeting of October 13, 2010 were approved as presented on a motion from Mr. Whitson and a second from Mr. Fichter and approved by the eligible Board members.

CORRESPONDENCE:

2. PB File: 2010-10 *Carried from October 13, 2010*
Block 93, Lot 3
25 Asbury Avenue
Application withdrawn at written request of the Applicant

OLD BUSINESS:

3. PB File: 2010-08
Salvatore & Anne Marie Massaro
Block 40, Lot 4
223 Comanche Drive
Request for Variances to construct single family home

- A-10** Letter of Interpretation dated November 2, 2010, prepared by William White, P.E. & P.P., of Maser Consulting PC
- A-11** Engineer's Review Letter of Revised Plan dated November 29, 2010, prepared by William White, P.E. & P.P., of Maser Consulting PC
- A-12** Plot Plan prepared by Charles Surmonte, P.E. & P.L.S., dated August 23, 2010, last revised November 1, 2010
- A-13** Front Yard Setback Plan, prepared by Charles Surmonte, P.E. & P.L.S., dated October 22, 2010
- A-14** Architecturals Sheets 1-3, prepared by Passman Ercolino Architects, P.C., dated November 22, 2010
- A-15** Photographs 1-7,

Mr. Widdis relinquished the Chair to Mr. Whitson as he was not eligible to hear the application.

Mr. Berube, Attorney for the Applicant, gave a brief summary of the prior testimony on the application, the concerns expressed by the public and the Board and what changes were made to the application in order to address those concerns. Mr. Berube stated that there had been 9 exhibits from the last hearing and that there would be additional exhibits entered.

Mr. DeNoia gave additional statements for clarification what happened at the first hearing, the Applicant's request for additional time to investigate, the preparation of a revised plan and that new

notice had been required as the last matter was carried to a date certain which meeting date was cancelled so new notice was required to continue the application and confirmed that there was continued jurisdiction.

Mr. Berube asked for Mr. White's letter of November 2, 2010 be marked as **Exhibit A-10** and Mr. White's letter of November 29, 2010 be marked as **Exhibit A-11**.

Charles Surmonte, PE, was sworn in and qualified as an expert in the fields of engineering and surveying. A revised Plot Plan prepared by Charles Surmonte, P.E. & P.L.S., dated August 23, 2010, last revised November 1, 2010 was marked as **Exhibit A-12**, a Front Yard Setback Plan, prepared by Charles Surmonte, P.E. & P.L.S., dated October 22, 2010 was marked as **Exhibit A-13**. Referring to Exhibit A-12 and A-13, Mr. Surmonte provided testimony regarding the average front and rear yard setbacks concerning Chapter 370-14 for properties 200' both north and south of the subject property, testified as to the established averages, how the plans were revised to address the averages, the changes in the variance reliefs being sought, the impacts of the maximums and minimums on the average, the significant variations in the location of the mean high water line on neighboring properties, the disadvantage of the subject property due to the limited depth compared with adjacent properties.

Mr. Surmonte provided additional testimony on how the revisions to the dwelling and driveway would impact stormwater and drainage on the property, how drainage along sidelines was designed away from surrounding lots and directed towards Comanche Drive. Mr. Surmonte also stated how the various comments presented by Mr. White's letter would be addressed.

Mr. McCarthy asked if the existing house conformed to the average setbacks. Mr. Surmonte answered it conformed with the front average setback but encroached into the rear average setback and gave the distances.

Mr. Whitson asked if the location of the utility units on the south side of the house could be relocated to the north side as the house to the south was closer than the house to the north.

Mr. White responded that there would be a swale on the north side of the house to address drainage.

Mr. White asked Mr. Surmonte to reiterate the maximum and minimum of the front setbacks for surrounding properties which Mr. Surmonte provided.

Mr. Whitson asked if the noise from the utility units on the south side would impact the adjoining neighbor. Mr. Surmonte answered that that side of the adjoining property was their garage and driveway and would not be directly adjacent to any living space.

Mr. DeNoia asked Mr. Surmonte questions on clarifying the impact of the driveway on drainage if it were to be done with asphalt in place of stone. Mr. Surmonte answered that the driveway drains to the road and stated it would not impact drainage if asphalt were used.

Mr. Whitson opened the hearing to the public on that witness only.

PUBLIC:

Jeff Bey, 229 Comanche Drive, owner of Lot 2 lot to the north was sworn in and asked under what conditions does the Board typically award variance relief. Mr. DeNoia stated that it was appropriate for Mr. Bey to question that witness as to engineering or survey and that general statements as to the criteria could be made later but would be determined by the Board as to whether those had been met.

Mr. Bey asked questions about the differences in the square footage of the existing and proposed dwellings and whether those numbers included the driveways. Mr. Surmonte answered that he had not

made those calculation but in general the proposed house was larger and that the numbers would include the driveways, covered porch.

As no one else from the public wished to be heard, Mr. Whitson closed that portion of the hearing.

Anthony Ercolino, AIA for Applicant, was sworn in and provided testimony regarding the changes in the design of the proposed dwelling including the removal of a fixed stairway to the attic, removal of the garage element from the front of the house now included within the footprint of the proposed house and the change in the location of the proposed footprint, the change in the setback relief requested. Mr. Ercolino also testified as to the conformity of the proposed house with other bulk requirements including height, side setbacks, lot area and square footage. Mr. Ercolino described how the house was designed to conform with those in the surrounding neighborhood while referring to Exhibits A-3 to A-9.

Mr. Bertekap asked about the window located at the top on the east elevation. Mr. Ercolino answered that it was a design feature over the covered porch area and a window was beyond that into the master bedroom.

Mr. Kleiberg asked how much higher was the proposed house than the houses to the north and the south. Mr. Berube answered that they did not know as that data had not been collected. Mr. Surmonte confirmed.

Mr. Whitson asked if the proposed house was set back the same distance from the water as the existing house. There was discussion regarding the similarity in the footprints and what was different.

Mr. Whitson opened the hearing to the public on that witness only.

PUBLIC:

As no one else from the public wished to be heard, Mr. Whitson closed that portion of the hearing.

Victor Furmanec, Professional Planner for the Applicant, presented his qualifications and was accepted by the Board as an expert in the field of planning. Mr. Furmanec provided testimony concerning the effect of certain ordinances on the subject property and the application, described the property location, the character of the surrounding lots – conforming and non-conforming, how the average front and rear setbacks requirement had a greater impact on the subject property due to less lot depth when compared with adjacent properties. Mr. Furmanec stated that a hardship existed concerning the lot width due to the inability of the applicant to obtain land from adjacent sources and that relief should be granted on that basis. Mr. Furmanec gave testimony why hardship relief could be granted concerning the two setback variances including the intent of the zone, the purpose of the bulk requirements in order to have new homes being built conform to the character to the neighborhood and that in this instance the varying setbacks along that waterfront varied significantly, that the proposed front setback was only an 8% deviation from the average, the rear setback was skewed due to the “cove” effect of the mean high water line and that the proposed location on the lot was suitable and reflects the development pattern for the neighborhood. Mr. Furmanec continued with testimony in support of the proposed house and its appropriateness for the zone and the size of the property.

Mr. Furmanec concluded his testimony with summary of the positive impacts of the development and that the development did not vary widely from the intent of the zone and that the area had no uniform lot size and that the proposed deviation alleviated by the variance and any detriment granted by the variance would be outweighed by the benefits to the development.

Mr. McCarthy asked if the photos would be marked as an exhibit. Mr. Furmanec described photographs supporting the character of the neighborhood and the subject lot which were marked as **Exhibit A-15**.

Mr. Whitson opened the hearing to the public for questions on that witness only.

PUBLIC:

Jeff Bey, 229 Comanche Drive, asked questions regarding what constituted the hardship specifically the impacts of the average front and rear setbacks and why the property could not be used.

Mr. Ercolino answered that due to the narrowness of the property no development could be made without a variance for the lot width and that the hardship was the inability to utilize it.

Additional discussion continued regarding the hardship aspects and examples of why certain developments required variance relief while others didn't and that the lot width, front and rear yard setbacks constrained the owner's from using it in the manner envisioned by the zoning ordinance. Also discussed was the Mr. Ercolino's statement concerning the development pattern of the neighborhood, the impacts that this application's deviation would have on future development applications.

As no one else from the public wished to be heard, Mr. Whitson closed that portion of the hearing.

Mr. Berube re-called Mr. Surmonte who provided further testimony regarding the issue of the rear yard setbacks for waterfront properties. Mr. Surmonte testified to the setbacks of the existing structure and the entire rear profile of the existing house did not comply with that section of the ordinance.

Mr. Whitson asked if he had calculated the square footage of the existing house which Mr. Surmonte answered yes, approximately 2,200 square feet.

Mr. Kleiberg asked questions about the proposed fence on the proposed wall, its height, the existing chain-link fence, impacts on the views and concerns about the height.

Mr. Berube commented that the fencing may have been required by the pool and that they would comply with Mr. White's requirement that it comply with Ordinance Section 390-30.

There was additional discussion about the proposed fencing and what portions of the fence would not pertain to the pool.

Mr. Kleiberg stated that the original plan showed 2 AC units on the north side of the house and 2 on the south of the house and now 4 units are shown on the south side and no furnaces on the north side. Mr. Ercolino answered that the furnaces were now located in the attic and that 2 would be located on the first floor as there was no longer a recess on the north side.

Mr. Fichter asked if the Applicant would consider changing the fence on the north side to what was shown for the south side or had it been considered. Mr. Surmonte answered no, they had not explored that. Mr. Berube stated that the Applicant would make whatever changes were necessary to comply with the pool code and then adjust anything else that was necessary. There was additional discussion amongst Mr. White, Mr. Kleiberg, Mr. Fichter, Mr. Surmonte and Mr. Berube about the concerns with the fence's height in the front yard and what was appropriate with the Ordinance as well as requirements for flood elevations which mandate the house and therefore the grade.

Mr. Whitson stated he too had a concern about the fence.

Rick Karinja, 227 Comanche Drive, was sworn in and asked why they needed fence around the entire property with some of it at a height of 8'. Mr. Surmonte responded that the fence height at its tallest would be 7.5'.

As no one else from the public wished to be heard, Mr. Whitson closed that portion of the hearing.

Mr. Berube stated that concluded their expert testimonies and would reserve his closing remarks.

Mr. Whitson opened the hearing to the public for any statements or questions.

PUBLIC:

Jeff Bey, 229 Comanche Drive, expressed concerns regarding the variances and the deviation from the average further impacting the average on future applications; concerns about fence and wall around entire property; contested the Planner's testimony concerning the pattern of the neighborhood; disagreed that there was a hardship for the use of the property and urged the Board to rule that the variance relief being requested was not warranted.

Rick Karinja, 227 Comanche Drive, stated he agreed with Mr. Bey's statements, that he had concerns with adding to the frontage; concerns that the character of the neighborhood will change over time as more properties come in upsetting the balance.

Chris Weir, 222 Comanche Drive, was sworn in and expressed the prevailing pattern and range of development and appreciated that the Applicant was improving the property but hoped that they would purchase from the lot next door and bring the lot into conformity.

Marianne Weir, 222 Comanche Drive, was sworn in and asked questions about lot coverage not just building coverage and whether the zoning required a maximum percentage of impervious coverage, would a variance be required if in the future the Applicant wanted to asphalt pave the driveway instead of pavers (answer not presently), was the neighbor to the south approached to purchase property to make the lot conforming and asked the Board to consider the reasonableness of a dwelling with less square footage.

Lylan Bey, 229 Comanche Drive, was sworn in and asked under what conditions the Board grants hardship and how would that be determined; urged the Board take into consideration the Planner's comment that the house be "squeezed" onto the lot and that she believed the negative criteria outweighed any positive criteria. Mr. DeNoia gave a lengthy explanation of the process and what the Board would evaluate in order to make a decision whether an application was more positive than negative impact to the neighborhood, the zone.

Cynthia DeSousa, was sworn in and commented that the Applicant attended the last hearing, heard the public's comments and adjusted their plan to address as many of the expressed concerns but that not everyone would be appeased and that she thought the Applicant's proposal would be an improvement to the property and that the house was proposed more than 110' feet from Comanche Drive and that she thought what was proposed was reasonable.

Jeff Bey, 229 Comanche Drive, gave additional statements concerning the hardship and was it a hardship when the lot width was non-conforming that the side setbacks met was a hardship. Mr. Bey commented on the Applicant's response to the public's concerns but disagreed that coming in with less variances than previously did not necessarily mean that was revised was acceptable.

Joseph Massaro, Jr., Builder for the Applicant, was sworn in and wanted to state for the record that the Applicant had not come in greedy and then went back and revised but that they initially had planned a house design that conformed with the zoning and that they were surprised by the finding in the ordinance concerning the average setbacks.

Mr. White asked Mr. Massaro what did the Construction Official's denial state. Mr. Berube answered two reasons – minimum lot width and the interpretation that the fixed stair created a 2 ½ story for which a variance was needed for the ½ story. Mr. Massaro added that the fixed stair was only to make it easier to access the storage space in the attic but had removed it from the revised plan.

Marianne Weir asked questions about how the dwelling and its footprint were designed. Mr. Massaro responded that they had built within the building envelope and met all the other requirements and when presented with the issues from the last meeting they responded.

As no one else from the public wished to be heard, Mr. Whitson closed that portion of the hearing.

Mr. Berube summarized the application and its variances, the expert testimony, the positive impacts of the project and offered final comments on each of the variances requested.

Mr. Whitson commented that he didn't think the application greedy but also that the ordinance was not obscure.

Mr. Massaro responded that the issue wasn't the language but that it was not listed with the bulk schedule where one ordinarily goes for that information.

Mr. McCarthy stated that if he had the numbers correct, to avoid both variances they would have to reduce the east west dimension by 25' and there was no way to avoid a variance on the average front and rear setbacks.

Councilman Bertekap commented that he believed the application was reasonable for the area and that it was a unique property due to the bend in the river and that the property was constrained by its width and that he wasn't crazy about the fence but based on testimony and flood requirements he thought they would see more like it in the future but what was proposed was an improvement to the existing and made a motion to approve the application.

Mr. McCarthy commented that the aerial photo identifies the site specifically and following the track of it and that he didn't believe the application violated the spirit of what the town was trying to accomplish and that the variance was justified and seconded the motion.

Mr. Kleiberg commented that he did not like the setbacks, the fence, the wall and he understands it has to do with FEMA changing the footprint but the new house has 3976 sq. ft. where the old house has 2200 sq. ft. and that he believed they could change the footprint to make it fit.

Mr. Fichter commented that he was torn, the Planner's testimony made a lot of sense to him and he believed there were hardships, that this area of town was deserving of the magnificent home proposed and that the proposed home would achieve that. Mr. Fichter commented that his concerns were with the average front and rear setbacks and when he asked himself what could be different to improve it he was not able to come up with any significant.

Mr. Whitson commented that he was torn but took into consideration the fact that the application had been significantly modified, that comments from the public depicted the new version as "small", not moderate, but small.

Ms. Smith called the roll:

AYES:	Mr. Whitson, Mr. McCarthy, Councilman Bertekap, Mr. Fichter
NAYES:	Mr. Kleiberg
ABSTAIN:	None
ABSENT:	Mr. Gervolino, Mr. Savarese, Mr. Sullivan, Ms. Flor
INELIGIBLE:	Mr. Ibex, Mr. Widdis

Ms. Smith stated the motion carried, application was approved.

Mr. Whitson asked that the record reflect that Mr. Widdis had resumed as Chair.

RECESS:

The Board adjourned for a 5-minute recess at 9:35 p.m., which was unanimously approved by the Board members present. Mr. Widdis called the meeting back to order at 9:06 p.m. with all members present.

NEW BUSINESS:

4. PB File: 2010-11
Block 74, Lot 18
75 Gooseneck Point Road
Request for Bulk Variances to construct accessory structure in front yard
- A-1** Photographs of 75 Gooseneck Point Road, Various Perspectives, Sheets 1-7, taken by Michael Bell
- A-2** Reduced Revised Dock Plan, prepared by Acre Survey Company, Inc., dated August 28, 2010, last revised November 3, 2010
- A-3** Proposed Dock Plan, prepared by Acre Survey Company, Inc., dated August 28, 2010, last revised November 3, 2010
- A-4** Borough of Oceanport Tax Map Sheet 5
- A-5** Architectural Plot Plan, Sheets 1-2, prepared by Matthew T. Cronin, AIA, dated October 26, 2010, last revised November 15, 2010

The Board's Professional Engineer and Planner, William White, was sworn in.

Michael Bell, Applicant, was sworn in, described the property location, described and explained the purpose of the application to remove an existing 12' x 15' wood shed and construct a proposed 22' x 29' 2-car garage in the front yard as waterfront lots are subject to State agency approvals, the variances being requested and the cause for the variances. Mr. Bell submitted Photographs of 75 Gooseneck Point Road, Various Perspectives, Sheets 1-7, taken by Michael Bell on December 7, 2010 which were marked as **Exhibit A-1** and gave a description of each photograph. Mr. Bell stated that one of the reasons they purchased the property was for the numerous shade trees that they hoped to keep and maintain and that the trees had influenced the proposed location for the new garage.

Mr. Bell submitted a reduced copy of an as-built survey plan with minor revisions showing the location of the proposed structure and the existing trees which was marked as **Exhibit A-2**. Mr. Bell expressed concern about placing the structure too close to the umbrella of the limbs of the trees.

Mr. White asked wouldn't it be disturbing the earth by the existing driveway connects into the proposed garage.

Mr. Bell answered that they would be curving the new driveway around and said that if the Board would to consider it, he would like to move the proposed garage from 68' feet to 60' from the street to help protect the tree by moving it away from the umbrella of the tree.

Mr. Bell presented a copy of the Borough of Oceanport Tax Map Sheet 5 which was marked as **Exhibit A-4**. Referring to Exhibit A-4, Mr. Bell provided additional testimony regarding the project's compatibility with the surrounding neighborhood including which lots also had detached structures in the front yard.

Mr. Bell also described the features of the proposed garage, its similarity to the existing house, what utilities would be installed – electricity and a water spigot on the outside but no plumbing inside. Mr. Bell explained the need for the additional space for storage of patio furniture, boat stuff, outdoor equipment as they are on the waterfront and do not have basements.

Mr. White stated for the Applicant's awareness that he would need to obtain a General Permit #7 from Flood Hazard for the structure which would be easier than an amended CAFRA.

Mr. Whitson asked if he would be willing to move the structure to 10' off the sideline. Mr. Bell answered not without killing trees. Mr. Whitson asked even with the shift forward to the street. Mr. Bell answered it wouldn't work at 20' feet. Mr. Whitson stated not 20 feet but 2 feet to a total of 10' off the sideline.

Mr. Bell answered yes and would like if the Board would grant it to have his front setback at 60' – not that he would go to 60' but whatever would protect the tree.

Mr. Widdis asked Mr. White if there were any comments from his review letter that needed to be addressed.

Mr. White answered no, just wanted to be sure the Applicant was aware of the DEP permit and the requirement of a grading plan to the Construction Official for his approval and that Mr. Whitson had addressed his one comment to move the structure to be more compliant.

Mr. Fichter asked what the height was. Mr. Bell answered 24 feet not counting the cupola.

Mr. Kleiberg stated he had a 3-car garage attached to the house and now he wanted a 2-car garage and asked if he really need all that space. Mr. Bell answered that it was their retirement house and they were building it so that the kids would come back.

Mr. Widdis commented about the 2nd floor and that the other front yard structures in the neighborhood didn't have them. Mr. Bell answered correct.

Mr. Widdis stated typically the front yard structures were sheds and not a 2-story structure and asked why he needed the 2nd story. Mr. Bell answered for storage and that it was intended to follow the same roof line as their house and match the house and that the other structures were not done that way.

Mr. Widdis asked questions about utilities and lighting. Mr. Bell responded that there would be no internal plumbing and that there would be electricity and described the outside lighting and that the cupola would have a dim light like the existing one.

Mr. Widdis asked if there would be stairs to the 2nd floor. Mr. Bell answered yes – a permanent fixed stair and not a pull down.

Mr. Widdis asked how the structure would be landscaped. Mr. Bell answered that they wanted to keep the ivy and low bushes around the foundation so as not to hide the stone.

PUBLIC:

Mr. Widdis opened the hearing to the public and as no one from the public was present, Mr. Widdis closed that portion of the hearing

Mr. Whitson made a motion to approve the application with the stipulation that the structure would be at a 10' side setback, no more than a 60' front yard setback, no inside plumbing with the exception of an outside spigot, no finishing of the inside and no changes to the Architectural Plot Plan, Sheets 1-2, prepared by Matthew T. Cronin, AIA, dated October 26, 2010, last revised November 15, 2010 introduced and marked as **Exhibit A-5**, which was seconded by Mr. McCarthy.

Ms. Smith called the roll:

AYES: Mr. Whitson, Mr. Ibex, Mr. McCarthy, Councilman Bertekap, Mr. Kleiberg, Mr. Fichter, Mr. Widdis
NAYES: None
ABSTAIN: None
ABSENT: Mr. Gervolino, Mr. Savarese, Mr. Sullivan, Ms. Flor
INELIGIBLE: None

Ms. Smith stated the motion carried, application was approved.

RESOLUTIONS:

5. Joseph Talerico – As the Resolution was made available to the Board previously, Mr. DeNoia summarized the Resolution after which, Mr. McCarthy made a motion to approve the resolution which was seconded by Councilman Bertekap and received the following roll call:

AYES: Mr. Whitson, Mr. McCarthy, Councilman Bertekap, Mr. Kleiberg, Mr. Fichter
NAYES: None
ABSTAIN: None
ABSENT: Mr. Gervolino, Mr. Savarese, Mr. Sullivan, Ms. Flor
INELIGIBLE: Mr. Ibex, Mr. Widdis

PETITIONS FROM THE PUBLIC: None

ADJOURNMENT: As there was no further business, the meeting was adjourned at 10:23 p.m. on a motion by Mr. Ibex which was seconded by Mr. Kleiberg and approved by the Board.

Respectfully submitted,

JEANNE SMITH
Secretary