

**OCEANPORT PLANNING BOARD
MINUTES
October 24, 2012**

Chairman Widdis called the meeting to order at 7:34 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. McCarthy, Councilman Johnson, Mr. Kleiberg, Mr. Sullivan, Mr. Whitson, Ms. DeSousa, Mr. Widdis

MEMBERS ABSENT: Mr. Kahle, Mr. Savarese, Mr. Fichter

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

BOARD BUSINESS: Ms. Smith advised that correspondence had been received from the Monmouth County Planning Board and that their publication "At A Glance" was available in the Clerk's office.

OLD BUSINESS:

1. PB File: 2012-07 **Carried from October 10, 2012**
Sea Girt Avenue LLC
Block 88, Lot 8.03 – Vacant lot
Request for Bulk Variance(s) for Front Yard Setback and Minimum Habitable Floor Area

- A-7 Plot Plan of Block 88, Lot 8.03, prepared by Nelson Engineering Associates, Inc., dated May 6, 2012, last revised October 12, 2012**
- A-8 Correspondence from Maser Consulting dated October 22, 2012**
- P-1 Photograph taken by Mark McCue, dated mid-90's, view of location of proposed driveway**
- P-2 Photograph taken by Mark McCue, dated mid-90's, view of water flow at proposed house**
- P-3 Photograph taken by Mark McCue, dated mid-90's, view of manhole, after a rainfall**
- P-4 Photograph taken by Mark McCue, dated mid-90's, view of end of Sea Girt and end of Milton Ave at the front of the subject property**
- P-5 Photograph taken by Mark McCue, dated mid-90's, view of location of proposed porch**
- P-6 Photograph taken by Mark McCue, dated in the 2000's, view of depression on lot**

Dennis Cantoli, Attorney for the Applicant, gave a brief summary of the application, information from the last hearing, what relief was being sought.

The following persons were sworn in: John Buletza, Engineer for the Applicant and William White, Board Engineer/Planner.

Chairman Widdis stated he would like the Engineer's letter of October 22nd to be addressed and asked if there was a revised map to be introduced. Mr. Buletza answered yes, Plot Plan of Block 88, Lot 8.03, prepared by Nelson Engineering Associates, Inc., dated May 6, 2012, last revised October 12, 2012 which was marked as **Exhibit A-7**. The correspondence from Maser Consulting dated October 22, 2012 was marked as **Exhibit A-8**.

Mr. Cantoli asked Mr. Buletza to respond to Mr. White's October 22, 2012. Mr. Buletza began with Drainage Comment section of the letter, explained the flow of drainage and indicated it graphically. There was a lengthy exchange between Mr. Buletza and Mr. White about the drainage flow on the property as it existed, the grades on the property, the effect a dwelling would have on the drainage flow, existing swales, side yard swales, concerns for potential encroachment into the conservation easement, appropriate slopes for swales, elevations, impacts that a structure would have on the site,

drainage flow at and on the right of ways of Milton and Sea Girt with Mr. White expressing some disagreements with Mr. Buletza's testimony.

Chairman Widdis asked additional questions regarding water flow, the right of ways, the edge of pavement and expressed uncertainty with Mr. Buletza's response.

Discussion continued between Chairman Widdis, Mr. Buletza and Mr. White including questions about impacts to adjacent Lot 7, existing grades throughout the lot, how contours were generated, the flatness of the land at the property line.

Mr. Cantoli then addressed Mr. White's Wetland Permit comments concerning the status of DEP permits and that they would obtain any permits the DEP required in addition to the ones already obtained along with those still valid under the Permit Extension Act. There was discussion on whether the Board had the authority to require the permitting be evidenced.

Mr. Whitson asked about the swale on the south side of the property and whether its creation would create a stream during heavy rainfalls. Mr. Buletza answered that site visits were performed on rainy days and did not observe evidence of that scenario and that it was a swale.

Councilman Johnson asked how far away from the structure's south side was the swale. Mr. Buletza answered 5 feet.

Ms. DeSousa expressed concern about the setback from the structure to the conservation easement as she believed it was a safety issue as trees could not be cut down, cut back and asked if there was adequate access to the home for emergencies. Mr. Buletza answered that the trees in the setback could be removed and the trees on the easement could be pruned. Ms. DeSousa commented that it amounted to a wall of trees 6 feet from the structure.

Mr. Kleiberg commented on the differences between grades of such small percentage of variation. There was disagreement with Mr. Buletza on the elevations and the differences in pitch. Mr. Kleiberg commented that residents have indicated that the water comes roaring down the street and that that type of water flow wouldn't be affected by the pitches and grades proposed and that it would just keep on going down into the crawl space and a garage. There was contentious discussion on the flow of water during heavy rainfalls.

Chairman Widdis opened the meeting to the public for questions on that witness only.

PUBLIC:

As no one from the public wished to be heard Chairman Widdis closed that portion of the meeting.

John Zingis, Owner/Applicant and Environmental Specialist, was sworn in, presented his qualifications and after some discussion on whether Mr. Zingis should be qualified it was determined that Mr. Zingis would proceed as a fact witness with the experience to answer questions about the DEP permitting but not for opinions or observations.

Mr. Zingis provided testimony concerning the environmental permits involved with the property, dates of validity, which permits qualified for the extension act, that he would contact the DEP to obtain confirmation of extension, how they modified the proposed development to be less intense, proof of the Army Corp of Engineers approval.

Mr. White asked questions about inconsistencies between different plans between 2000 and present, inconsistencies with the conservation easement dedication and requested a copy of the recorded conservation. Mr. Buletza provided a timeline of the permit including an engagement with Habitat for Humanity to secure the property, Habitat's request of the Borough to vacate a portion of the right of way

in order to eliminate variance relief and the result of that request, his charge to go back to the DEP with a plan showing existing lot lines to be removed, area of proposed access easement to Lot 7 and an area of proposed 15' wide sanitary sewer easement of approximately 841 square feet and when they went to DEP made it clear that the property was not owned and would need to be approved by the municipality which was noted on the plan. Mr. Buleta explained how that change would reduce wetland disturbance. There was heated discussion of disagreement on the figures shown.

Mr. White asked additional questions of Mr. Zingis concerning the area being disturbed in relation to the transition area waivering which Mr. Zingis provided detailed explanation of the disturbance areas including area that encroached into the right of way and that they would go back to the DEP with a history of the site and request a change.

Mr. White asked then there's no transition area encroachment into the Borough right of way and was told correct. There was additional discussion concerning the Army Corps of Engineers process.

Ms. DeSousa asked who would be their targeted purchaser to live in the home. Mr. Zingis answered they examined the neighborhood's characteristics and asked an architect to draw something that wouldn't look like a box and would be custom and the size, width, depth of the house was close to what was in the surrounding neighborhood and would be a 2-story like other house that have put on second story additions and that there were persons that care about the environment that would live there and that it would be a middle to upper class.

Mr. Zingis also addressed the comment about the trees that were not mature as the site had been disturbed in the past and that those trees would not have large limbs extending out to the house. Ms. DeSousa commented that she was baffled as she had not seen this type of development anywhere in Oceanport.

Mr. White asked about the requests submitted to the Governing Body and was there any indicator of their response which Mr. Zingis directed back to Councilman Johnson who answered that it was the Borough's practice to not vacate right of ways and as they have an open-space tax it would be counterproductive. Mr. Zingis commented that that was a common practice in towns.

Mr. Whitson asked if it were common practice in other towns to not give away right of way why had the Applicant assumed that the town would. Mr. Zingis answered with an example of why a town might consider it.

Chairman Widdis opened the meeting to the public for questions on that witness only.

PUBLIC:

As no one from the public wished to be heard Chairman Widdis closed that portion of the meeting.

Chairman Widdis then requested Mr. Cantoli to summarize the Applicant's request for relief.

Mr. Cantoli asked to delay his summation until after the public's comments.

Chairman Widdis opened the meeting to the public for comments or statements on the application.

PUBLIC:

Mark McCue, 18 Sea Girt Ave, was sworn in and gave a statement urging the Board to not grant the variances and why including setting a precedent for future developments in town. Mr. McCue submitted several photographs depicting conditions of the subject property normally and after storm events taken over a period of years. Mr. Cantoli objected the submittal of the photographs because there was no way to verify. Mr. DeNoia stated that Mr. McCue could still submit them and provide information for each of the photographs which Mr. McCue described and were marked **Exhibits P-1 through P-6**. Mr. McCue

expressed concern for safety factors including the end of Sea Girt Avenue directly into the proposed driveway. Mark McCue summarized his concerns including water flow, safety and precedent.

Mr. Whitson asked Mr. McCue if his testimony was that the water at the site was the same now as they were in the pictures and was told yes and asked why had he taken the pictures in the late 90's early 2000's which Mr. McCue responded in relation to the earlier application for the 2 houses.

Chris Despo, 357 Milton Ave, located at the corner of Sea Girt and Milton, was sworn in and gave a statement regarding the drainage problem in the area and that it ended directly at the subject property and also commented that sometimes what was shown on drawings doesn't work out in the field and that maybe the grading plan provided would work but what if it failed and then there was water with nowhere to go and that before the Board grants any variance they should consider that.

As no one else from the public wished to be heard Chairman Widdis closed that portion of the meeting.

Mr. Cantoli for the record objected to the evidence of the photographs and stated why and gave his summation on the application including why he believed the variances being sought were a c1 case, why it was their position that it was not a self-created hardship, why it was an exceptional situation, affirmed that they would secure any and all other DEP or ACOE permitting required, being proposed was a residential use in a residential zone, the proposed development was not intrusive with adjacent Lot 7, the house was of modest size, and that the grading plan proposed would work and would address the water situation so that it would not impact surrounding neighbors and asserts that the positive and negative criteria were met and urged the Board to grant the relief being sought.

Mr. White reasserted why he believed it was self-created hardship, why he believed that there would still be drainage issues based on what was proposed.

Mr. Cantoli responded that it was the Board that created the lot and not a self-created hardship.

Mr. Whitson commented that he was present on the Board during the original application and it was the Board's understanding that the lot would never be developed.

Mr. Cantoli responded that that was not what the resolution stated.

Mr. Whitson further commented concerning the contention between the Board's Engineer and the Applicant's Engineer, that he shared Mr. White's concerns on the drainage issues, concern that the house was proposed too close to the right of way, concerned that the house's first floor was too small, acknowledged the neighbors' concerns and that he had not seen any positive criteria to support the granting of the variances.

Councilman Johnson stated that he agreed with most of Mr. Whitson's statements and added that he had concerns about safety coming from a view from the fire department there was no access to the property at all except from the front.

Ms. DeSousa commented that she concurred with Mr. Whitson and Mr. Johnson and was why she had questioned the distances from the house to the conservation easement being only 6' around back and sides and could not see how it was safe and also was not convinced that this matter wasn't a self-created hardship as the Applicant was involved with the original application before he purchased it and knowingly purchased the property with the restrictions.

Mr. McCarthy concurred with all the previous comments made and could not find any benefit with the application at all and felt there were too many detriments and that the lot should never be built on and kept as open space.

Mr. Kleiberg stated he agreed with everyone else thus far and could not see if during a major thunderstorm with 2" an hour all the slopes and pitches would go out the window and that the water would go screaming down the street into the proposed garage and try to go out the back and end up filling the crawl space. He further stated that he couldn't see why anyone would live there.

Chairman Widdis expressed concern that it was too close to the road and that he was also concerned about the area around of the property and that there was little to no area for recreation and the conservation easement restricted many uses for the property.

Mr. Whitson made a motion to deny the application based on reasons previously stated which was seconded by Mr. Kleiberg and received the following roll call:

AYES:	Mr. Whitson, Mr. McCarthy, Councilman Johnson, Mr. Kleiberg, Mr. Sullivan, Ms. DeSousa, Mr. Widdis
NAYES:	None
ABSTAIN:	None
ABSENT:	Mr. Kahle, Mr. Savarese, Mr. Fichter
INELIGIBLE:	None

Ms. Smith stated the motion carried unanimously.

The Board adjourned for a short recess at 9:44 p.m., which was unanimously approved by the Board members present. Chairman Widdis called the meeting back to order at 9:50 p.m. with all previous members once again present.

NEW BUSINESS:

2. PB2012-09 – James Lazarus
32 Whitehall Circle
Block 141, Lot 1
Request for Bulk Variance for Front Yard Setback for construction of in-ground swimming pool

James Lazarus, Owner and Applicant, was sworn in and described the application to install an in-ground swimming pool and that relief was needed because he was on a corner lot he had 2 front yards and wished to construct the pool within the front yard along Main Street.

Chairman Widdis asked questions about a possibility of a pool house and fencing.

Ms. DeSousa asked where would the pool equipment would be located and was told in the southwest corner of the fence and would have landscape screening.

Mr. McCarthy asked if there would be an outdoor lighting and was told only one in the pool but no additional lighting.

Ms. DeSousa asked about the easement along the Main Street side of the property as there was a fence on it. Mr. Lazarus answered it was a gas line.

Mr. Sullivan asked what type of surface would be around the pool as nothing was shown on plan and was told regular concrete and wasn't shown on plan because he didn't know it was supposed to be shown but that he would only be putting in the minimum required with a small area at the low end of the pool for lounge chairs and doesn't need anything additional as he had a deck.

Councilman Johnson requested that the pool equipment be located as far away as possible from adjacent neighbors.

Mr. White asked if the provided survey accurately depicted existing conditions and was told yes.

Chairman Widdis requested that additional vegetation be provided along the fences for screening and was told there was some there but he would be putting in additional screening for their own privacy.

Chairman Widdis opened the meeting to the public for comments or statements.

PUBLIC:

As no one from the public wished to be heard Chairman Widdis closed that portion of the meeting.

Mr. Sullivan made a motion to approve the application as revised which was seconded by Councilman Johnson and received the following roll call:

AYES:	Mr. Whitson, Mr. McCarthy, Councilman Johnson, Mr. Kleiberg, Mr. Sullivan, Ms. DeSousa, Mr. Widdis
NAYES:	None
ABSTAIN:	None
ABSENT:	Mr. Kahle, Mr. Savarese, Mr. Fichter
INELIGIBLE:	None

Ms. Smith stated the motion carried unanimously.

Oceanport Center LLC
E. Main Street
Block 88, Lot 26.01
Application for Amended Site Plan

Mr. Falvo, Attorney for Oceanport Village Center, stated that he'd just had a discussion with Mr. White who advised that he had not had an opportunity to review the Applicant's traffic report which was just recently supplied and had requested additional time to consult with the Borough's Police Department and his own traffic professional.

Mr. Falvo continued that due to the late hour the Agenda most likely would not reach his matter and requested that the application be carried to November 28, 2012 with no additional notice required which the Board granted.

Councilman Johnson asked Mr. Falvo to address at the next meeting a 50' right of way from the intersection to the soccer fields on Port Au Peck Avenue dedication to the Borough. There was discussion about documentation of same which was not available but some members recalled that it was discussed. Mr. White stated that there had been 10' provided to the Borough on each roadway for road widening. It was decided that it would be looked at for next meeting.

3. PB2012-10
66 Tecumseh Ave – Renee & Michael Amoroso
Block 7, Lot 11
Request for Bulk Variances for Rear Yard Setback and Setback from Structure for construction of in-ground swimming pool

**A-1 Survey of Lot 11, Block 7, prepared by Thomas P. Santry, P.A., dated
December 13, 2011**

A-2 Copy of Proposed Site Plan – 66 Tecumseh Ave

Renee & Michael Amoroso, Owners and Applicants, were sworn in, explained they were constructing a new home at 66 Tecumseh Ave and submitted a Survey of Lot 11, Block 7, prepared by Thomas P. Santry, P.A., dated December 13, 2011 which was marked as **Exhibit A-1** and a Copy of Proposed Site Plan – 66 Tecumseh Ave which was marked as **Exhibit A-2**.

Mr. Amoroso described the application to install a 12' x 24' pool and the variances for rear yard setback and setback from structure as there was no other location on the property in which to place it.

Mr. White asked the Applicant if they were currently renovating the existing house along with an addition on the west side and was told yes. Mr. White asked was the 23.5' rear yard setback previously existing and was told yes. Mr. White asked where they proposed to place the pool filter and heater and was told in an 11' area on the easterly side of the house at 5' off the side.

Chairman Widdis asked how far was the neighbor's house from the property line as he was concerned with noise from the pool equipment impacting the neighbors. Mr. Amoroso approximated that the house was about 15' from the property line, 20' from the equipment. Chairman Widdis asked if there was another location the pool equipment could be moved to. Chairman Johnson asked wasn't that the garage side of the house as that might help and was told yes. There was more discussion on the best place to put the pool equipment and as the air conditioner equipment was in the same location, it was the garage side of the neighbor's property, it was fenced and Applicant's planned to install landscaping, the neighbor had not opposed the equipment would remain where proposed.

Chairman Widdis asked additional questions about pool shed, lighting.

Chairman Widdis opened the meeting to the public for comments or statements.

PUBLIC:

As no one from the public wished to be heard Chairman Widdis closed that portion of the meeting.

Councilman Johnson made a motion to approve the application as revised which was seconded by Mr. Sullivan and received the following roll call:

AYES:	Mr. Whitson, Mr. McCarthy, Councilman Johnson, Mr. Kleiberg, Mr. Sullivan, Ms. DeSousa, Mr. Widdis
NAYES:	None
ABSTAIN:	None
ABSENT:	Mr. Kahle, Mr. Savarese, Mr. Fichter
INELIGIBLE:	None

Ms. Smith stated the motion carried unanimously.

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

ADJOURNMENT: As there was no further business, the meeting was adjourned at 10:22 p.m. on a motion by Mr. Whitson which was seconded by Mr. Sullivan and approved by the Board.

Respectfully submitted,

JEANNE SMITH
Secretary