

**OCEANPORT PLANNING BOARD
MINUTES
September 12, 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. Kahle, Mr. McCarthy, Councilman Johnson, Mr. Savarese, Mr. Sullivan, Mr. Whitson, Mr. Fichter (entered at 7:59 PM), Ms. DeSousa, Mr. Widdis,

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

BOARD BUSINESS:

1. Minutes of the meeting of August 8, 2012 were approved as presented on a motion from Mr. Whitson and a second from Mr. Kahle and approved by the eligible Board members.
2. Correspondence – Ms. Smith stated that Mr. White had submitted the Board's comments to the NJDEP as expressed by the Board at last month's meeting concerning an NJDEP application on Summerfield Avenue and that the Board had been previously provided a copy.

OLD BUSINESS: None

NEW BUSINESS:

3. PB File: 2012-04
Hill Court
Request for Interpretation

Chairman Widdis stated that the matter concerning Hill Court had been postponed and would be rescheduled at a future date.

4. PB File: 2012-06
Therese Cresanti-Daknis
Block 109, Lot 14
105 Horseneck Point Road
Request for Bulk Variance(s) for Lot Width, Rear Yard Setback

A-1 Application

A-2 Zoning Officer's Denial Letter dated June 22, 2012

A-3 Set of Design Plans, Sheets 1-7, prepared by Professional Buildings Systems, Inc. dated March 25, 2011 and last revised July 13, 2011

A-4 Plan entitled "Survey of Property w/Topography & Plot Plan w/Grading For Variance, prepared by R.C. Associates and Ronald W. Post Surveying, Inc., dated August 25, 2011 and last revised July 19, 2012.

A-5 Photo Exhibit, Sheets 1-7, prepared by Victor Furmanec, P.P., various dates.

The following persons were sworn in: Therese Cresanti-Daknis, Property Owner and Applicant and Board Engineer/Planner, Mr. White. Service and publication were reviewed and jurisdiction was accepted.

James Berube, Attorney for the Applicant, submitted for the record **Exhibit A-1** Application, **Exhibit A-2** Zoning Officer's Denial Letter dated June 22, 2012, **Exhibit A-3** Set of Design Plans, Sheets 1-7, prepared by Professional Buildings Systems, Inc. dated March 25, 2011 and last revised July 13, 2012, **Exhibit A-4** Plan entitled "Survey of Property w/Topography & Plot Plan w/Grading For Variance,

prepared by R.C. Associates and Ronald W. Post Surveying, Inc., dated August 25, 2011 and last revised July 19, 2012.

Mr. Berube asked questions of Ms. Cresanti-Daknis including when she had purchased the property, who resided at the property, the existence of a shed located on the property, the desire to demolish the existing dwelling and construct a new single-family dwelling, the lack of space and storage to meet her family's needs, the regular experience of flooding in the basement during storms, the location of the existing dwelling towards the front of the property, the request to locate the new dwelling closer to the center of the lot, the Ordinance requirement for average setbacks on waterfront properties, the existing non-conformity for lot width.

Chairman Widdis asked about the coastal line to which Mr. White responded that there was and that they had already obtained a CAFRA permit from the NJDEP. Chairman Widdis asked if the approval was for where the house was presently proposed. Mr. White did not have the CAFRA permit but that the Planner could attest to it. Chairman Widdis asked Mr. Berube if their Engineer would be testifying to which Mr. Berube responded that the Engineer had a conflict for that night's meeting however had called and spoken to Mr. White about his concerns but that if necessary they could have him come back at another meeting. Chairman Widdis commented that he thought that was necessary as the lot would have to be re-graded significantly. Mr. Berube acknowledged same and that it had been discussed that a different drainage system may have to be designed at time of construction to manage the drainage. Mr. Berube also affirmed that the CAFRA permit authorized the demolition and to locate the new house and although it was a January 2012 date, the last revision did pre-date the current plan and would need to check if the CAFRA would have to be revised.

Mr. White, Chairman Widdis and Mr. Berube discussed further the grading issues and solutions such as swales and that the Applicant's Engineer would address those concerns.

Mr. Whitson asked if the neighbors on Lots 13 and 15 had been told about the project and if they had any issues. Ms. Cresanti-Daknis stated yes, she had discussed it with her neighbors.

Mr. Sullivan asked if the views had been discussed with the property owner or the tenant on Lot 13. Ms. Cresanti-Daknis didn't recall but stated that she's discussed with all over the last 2 years.

Ms. DeSousa asked if they were going to replace the shed. Ms. Cresanti-Daknis commented that she was not attached to it and would not care if it had to be removed. Ms. DeSousa stated that the lot was undersized for width and commented on the ability to purchase land adjacently to become conforming.

Mr. Kleiberg asked questions about the type of construction, foundation system, slab, crawl.

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

PUBLIC:

As no one from the public was present Chairman Widdis closed that portion of the meeting.

Mr. Berube then called Victor Furmanec, Professional Planner for the applicant who was sworn in, presented his qualifications and was accepted by the Board as an expert in Planning.

Board Member Jason Fichter entered the meeting at 8:00 p.m.

Mr. Furmanec provided testimony concerning the location of property, characteristics of the lot – the lot width non-conforming, the existing front yard setback to the principle building non-conforming, the size of the building non-conforming related to first floor area and total floor area of the building and the rear yard setback for the accessory shed on the property that was also non-conforming as 10' was required and 4.7' existed. Mr. Furmanec described the proposed construction and that it would conform to all

bulk requirements with the exception of the setback from the natural waterline any property was additionally required to meet a setback of not less than 30' but must be the average setback of the other homes within 200'. Mr. Furmanec indicated the various properties included in the average referring to an Exhibit which was introduced as **Photo Exhibit, Sheets 1-7, prepared by Victor Furmanec, P.P., various dates** and marked as **Exhibit A-5**.

Mr. Furmanec continued testimony describing the curvature of the coastline and its impact on the subject property which property occurs at the greatest depth and the distances on other properties, the fact that other homes immediately adjacent to the Applicant's property neither conform to the waterline setback and what those setbacks were, the 3 variances for which relief was being sought – lot width of 78' where 120' required which could not be made conforming through purchase of adjacent land as those lots were developed, rear yard setback average of 165.50' required but 145.3' proposed, and an accessory structure side yard setback where 10' required existing was 4.7'. Mr. Furmanec further testified as to the basis for hardship because of the natural waterline, no opportunity to purchase adjacent land to make lot width conform without causing other non-conformities and would substantially impact the character of those properties and believed that the variance for lot width could be granted without substantial impact on a hardship basis and that the shed located in the rear yard being a pre-existing condition prior to the Applicant's purchase of the property with significant vegetative screening and did not see any impact to the adjacent neighbor but shed was on cinder blocks and probably could be moved should the Board require.

Mr. Widdis asked if there were any utilities to the shed and was told no.

Mr. Furmanec further testified that the variance concerning the setback from the natural waterline and discussed that the home conforms to all the normal front, side and rear setbacks so adequate light and air space was provided and discussed in greater detail the factors of the rear yard setback including the requirement of no less than 30' from the water would be sufficient if the other houses were up towards the water. He stated that a number of the properties did not conform to that setback and the home as proposed renders 3 of the adjacent properties conforming. There was additional discussion on the impact other properties would have on the average and the potential for the average to change as future properties and their buildings were renovated.

Mr. Berube asked Mr. Furmanec to explain how the application satisfied the negative criteria. Mr. Furmanec stated that the positive criteria was that the application would make neighboring properties more conforming and that advanced the Municipal Land Use Law's foster of appropriate use of developable land and with respect to the negative criteria the home was not blocking views and that the home to the west was surrounded by vegetation and did not have much of a view contrasting that the properties to the east which were more open – the applicant's house was set back further than the houses to the east and would not be blocking views. Mr. Furmanec stated also discussed the need to address the drainage on the property which was pending upon the satisfactor resolution of that issue he did not see any substantial impacts and on balance the benefits offered substantially outweigh the detriment.

Mr. Berube asked Mr. Furmanec if it was his expert opinion and as a licensed Professional Planner in the State of New Jersey that the requested lot width, accessory building location variances were justified and did the requested waterline setback meet the statutory criteria for a flexible "c" variance to which Mr. Furmanec responded yes. Mr. Berube asked Mr. Furmanec if the granting of the variance advanced the purposes of the Municipal Land Use Law as well as the goals and objectives of the Borough of Oceanport's Zoning Ordinance and Master Plan which Mr. Furmanec answered yes and could the requested relief be granted without substantial detriment which he answered yes.

Chairman Widdis acknowledged Board member Mr. Fichter and that he would be participating in the questions for the application.

Mr. Fichter stated that the 2 variances for the lot width and the side yard setback for the shed made sense to him and asked wouldn't the rear yard setback variance be eliminated if the house were to slide 20' forward. Mr. Furmanec confirmed yes and that clearly the neighborhood had homes which were closer to the waterfront – homes within 30-40' and that the Ordinance states that they need to meet the average setback but it didn't see an issue with homes located at 30' at a minimum and that as proposed now the lawn area to the water would be reduced allowing greater enjoyment of a great resource in the area.

Ms. DeSousa addressed the Ordinance requiring the average front yard setback which would require the house to be squeezed into that dashed area between the average front yard and the average rear yard which would make it difficult to slide the house forward as suggested by Mr. Fichter without having to deviate from the required front yard setback. Mr. Furmanec stated that conceivably the house could be slid 50 feet or more forward.

Mr. McCarthy asked during the concept stage what factors led them to the proposed location. Ms. Cresanti-Daknis answered she just wanted to be in line with the other houses and match the coastline so that it looked nice.

Mr. Furmanec added that the proposed house location left adequate room on either side of the house for swales or any overflows from impacting adjacent homes whereas if slid forward it may adversely affect.

Mr. Kahle commented that the reason they were at the 165' mark was they want to be able to see the water around the corner and if they were back the 20' they wouldn't get that view and asked what happens to the guy on Lot 13 that comes to the Board. Mr. Furmanec answered that as of right now that entire property line was screened with vegetation and if a new house came in and the treeline came down there again, by allowing the subject home to be located where proposed would allow Lot 13 to be located in a similar fashion and would take advantage of a much better location relative to their views in the future.

Mr. Widdis commented that there wasn't as much property to work with because the water line was a lot closer to the house on Lot 13.

Mr. Savarese expressed concern with the rear setback as well and that if a red line were drawn from the westerly point of the house on Lot 15 and the westerly point of house on Lot 13 and Lot 12 pretty much parallel with in line where it says mean high water top line on Lots 12 and 13 which pretty much pushes the house back 20' gave the view and potentially 13 a better view planning in the future and that he was in favor of moving the house back which would also eliminate the variance.

Mr. Furmanec added that he neglected to point out was the way the setback of the home relates to the regular uneven lot line of the rear of the property and pointed out that the western lot line was shorter than the eastern lot line and as a result the variance which was proposed was not uniform across the back of the house – the eastern part of the home was entirely conforming and that it was a small portion of the western corner of the house as well as the deck which was attached which were in the setback – only a small portion of the home – somewhere in the area of 5, 6 7 or 8 feet of the northwest corner which intrudes into the setback and the eastern part of the deck and home and atrium off the back of the house were all entirely within the committed setback.

Mr. Savarese responded that he understood all of that but as proposed they were giving Lot 13 no chance of a view to the east and that if the house were moved back 20' they would still have a very good view and plan and eliminate a variance.

Mr. Furmanec stated that he didn't want to denigrate the view but the view that anyone was entitled was the view straight out the back of their house and currently some of the property owners enjoyed more than the view out the back of the house.

Mr. Whitson agreed with the comment by Mr. Savarese about the setback and moving the house back and if they moved or eliminated the shed they would only be asking for 1 variance and not 3 which Mr. Furmanec answered right. Mr. Whitson asked about the statement that they selected the spot for the house so they could put swales there and asked was he saying that if they moved the house where Mr. Savarese commented that they couldn't put swales there. Mr. Furmanec said that it seemed to him that the house was closer and that there was more of a setback to the west to allow for drainage whereas if the house was moved towards the street then that distance...Mr. Widdis asked if that was his professional opinion or speculation and that they would leave that to the Engineer. Mr. Whitson concluded his remarks by stating he had concerns.

Mr. White reminded the Board that when there was a deck attached to the house it was part of the principle structure. Mr. White continued that the discussion about the average setback from the waterline and reference to the minimum of 30 – the minimum of 30 comes from the zone not for waterfront lots which was the average.

Mr. Widdis commented that the houses there had been there forever so they were put down there before any zoning more than likely and if they looked at the new houses on the right he suspects that they would find that those houses were built closer to the street as those lots were shallower and as time has gone on the newer houses were not quite as far back as the houses being discussed and that the house on Lot 15 had probably been there for a long, long time.

Ms. Cresanti-Daknis said her builder built that house.

Mike Hickens, the builder who was present, confirmed that it had been 6 or 7 years since they had built that house and that there was an existing house on the property. Mr. Widdis asked if the house was right there and the builder said no but he couldn't recall exactly where it was and that his recollection was it needed a variance and that they got it to build closer to the water.

There was additional discussion concerning the location of other houses to the water further east and west of the property, the elevations of those houses, the range of setbacks, the location of the proposed house within the range of setbacks.

Ms. DeSousa asked so it's only the deck that falls...Mr. Furmanec said that there's a corner of the home that extends into the setback but it was mostly the deck. Ms. DeSousa so if it was a patio it wouldn't count which Mr. White affirmed.

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

PUBLIC:

As no one from the public was present Chairman Widdis closed that portion of the meeting.

Mr. Berube asked in light of the concerns of the Board and discussions with Ms. Cresanti-Daknis, perhaps they could resolve the drainage issues at the same time and requested that the Board carry the matter and they may come back with something for future consideration.

Mr. Sullivan stated that he thought people were asking questions and making comments about the setback but he didn't have any questions but did have a comment – he believed that even if they move the house back it would affect the view of Lot 13 and that putting it in-line with the house on the lot to the east he had no problem with that.

Councilman Johnson stated he agreed with Mr. Sullivan and that it was his personal opinion coming from someone who lives 17' from the water and not a 170' and has no problem with the house.

It was decided that the matter would be carried to the October 10, 2012 meeting with no new notice required.

Mr. Widdis asked Mr. Berube to have the Engineer available and was told he would.

5. Public Hearing on Proposed Amendment to Master Plan
Open Space and Recreation Plan Update

Mr. McCarthy summarized why the update was needed for the Borough's Sustainable Jersey certification, the process, the extent of the update including the acquisition of Maria Gatta Community Park. Mr. McCarthy stressed that the Plan did not attempt to deal with Fort Monmouth or Monmouth Park because of the timing and outcomes were uncertain.

Councilman Johnson requested one correction be made where Charles Park refers to having a basketball court should be removed as the court was removed when they updated that park a couple years ago and that the Community Center doesn't mention the presence of a basketball court and should be added.

PUBLIC:

Chairman Widdis opened the meeting to the public for comment on the Master Plan amendment and as no one from the public was present closed that portion of the hearing.

Councilman Johnson made a motion to adopt the resolution approving the revised Open Space and Recreation Plan to the Master Plan which was seconded by Mr. Kleiberg and received the following roll call:

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

Ms. Smith stated the motion carried.

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 8:49 p.m. on a motion by Councilman Johnson which was seconded by Mr. McCarthy and approved by the Board.

Respectfully submitted,

JEANNE SMITH
Secretary