



BOROUGH OF OCEANPORT

PLANNING/ZONING BOARD

MINUTES • AUGUST 14, 2018

Regular

Maple Place School

7:30 PM

2 Maple Place, Oceanport, NJ 07757

- I. **Call to Order:** Vice-Chairman Whitson called the meeting to order at 7:30 p.m.
- II. **Open Public Meetings Statement:** Vice-Chairman Whitson stated “Adequate notice of this meeting has been provided by notice to the Asbury Park Press and The Link News on January 16, 2018 and by the posting of same on the municipal bulletin board and Borough Web Site.”
- III. **Flag Salute:** Vice-Chairman Whitson led the members of the Board in the flag salute.
- IV. **Roll Call:**

Attendee Name	Title	Status	Arrived
Christopher Widdis	Chairman	Absent	
James Whitson	Vice Chairman	Present	
William Sullivan	Mayor's Designee	Absent	
Robert Proto	Council Liaison	Absent	
Joseph Foster	Environmental Commision Liaison	Present	
John (Jack) Kahle	Class IV	Present	
Michael Savarese	Class IV	Present	
Robert Kleiberg	Class IV	Present	
Daphne Halpern	Class IV	Present	
Thomas Tvrdik	Alternate I	Present	
Michael O'Brien	Alternate II	Present	7:33 PM
Jeanne Smith	Board Secretary	Present	
William White	Board Engineer/Planner	Present	
Kevin Kennedy	Board Attorney	Present	

V. **Board Business:**

1. Approval of the June 12, 2018 Minutes

Vice-Chairman Whitson called for a motion to approve the Minutes of June 12, 2018, which was made by Mr. Kahle, seconded by Ms. Halpern and approved by the eligible members of the Board

2. Mandatory NJDEP Stormwater Review Training

Ms. Smith advised that she contacted the NJDEP regarding Civil Rights training, which was recommended by JIF. She advised that the Scott Arnette, Borough Attorney, will provide that training. However, he was unavailable for this meeting. She stated that the Borough has a Stormwater Management Permit with the DEP. A new requirement that Planning/Zoning Board members must receive the minimal training requirements. Ms. Smith will provide a link in an email for all members to watch and after doing so, members will sign a form to certify that it has been viewed.

VI. **Old Business:** None

VII. **New Business:**

A. PB2017-02.1 93 Main St, Block 110, Lot 6:

1. Removal of existing garage, attached shed and (1) of the 2-family units; Proposed improvements are a new attached 2-story dwelling unit, new 2-car detached garage and (4) parking spaces seeking Use and Bulk variance relief

Removal of existing garage, attached shed and (1) of the 2-family units; Proposed improvements are a new attached 2-story dwelling unit, new 2-car detached garage and (4) parking spaces seeking Use and Bulk variance relief:

"d(2)" Use Variance - expansion of non-conforming two-family use

"d(5)" variance - density of 6.5 dwelling units/acre proposed, 1.5 dwelling units/acre permitted

Minimum Lot Area - 30,000 SF required, 13,491 SF pre-existing

Minimum Lot Width - 150' required, 90 feet pre-existing

Minimum Lot Depth - 200' required, 149.90' pre-existing

Maximum Impervious Coverage - 25% max permitted, 32.5% existing, 43.9% proposed

Minimum Habitable Floor Area/Family - 1-1/2 story structure

Minimum Habitable Floor Area/Family - 2-story structure

Mr. Kennedy stated for the record that service had been reviewed, was in order and the Board accepted jurisdiction. He thanked Mr. Witek and his client for their patience and providing new notice for the Application. William White, Borough Engineer/Planner, was sworn. Mr. Kennedy introduced the following:

EXHIBITS

A-1 Zoning Denial dated December 16, 2016

A-2 Land Use Board Application

A-3 Survey prepared by Land Control Services, dated April 5, 2017

A-4 Architectural plans prepared by Passman Ercolino Architects, dated September 1, 2017 (4 sheets)

A-5 Maser Consulting review memorandum, dated May 24, 2018

A-6 Addition & Alterations prepared by Passman Ercolino Architects, dated August 14, 2018

Robert Witek, Esq. appeared on behalf of Applicant, Peter Brown. He described the property as being a long-time, pre-existing 2-family house surrounded on 3 sides by the former Ft. Monmouth. Applicant Peter Brown was sworn. Mr. Witek elicited testimony from Mr. Brown regarding the history of the property, his purchase, the zoning of the property, and condition of the property at the time of purchase. Mr. Brown submitted an OPRA request for construction permits and received copies of those pertaining to the properties. He discussed information contained on the permits that led him to believe that the property was a 2 family residence. He described improvements to Unit 1 and the poor condition of Unit 2. Mr. O'Brien asked when the OPRA request was submitted. Mr. Brown stated it was after the purchase, where he discovered discrepancies. Mr. Foster asked Mr. Brown if he applied for a Certificate of Occupancy. Mr. Brown stated he did not and that he didn't think it would have been approved. There was no record of a previous CO. Ms. Halpern asked questions about the bathroom plumbing, but noted there were no plans for a kitchen in Unit 2. Mr. Brown stated the cabinets were removed in the kitchen and there was a complete stove. Mr. Kahle asked if the plan was to remove Unit 2 if the relief requested was approved. Mr. Brown confirmed that it was. Mr. Kleiberg asked who the construction official was on the original permits. Mr. Witek replied it was probably Walter Joyce, former construction official.

Vice Chairman Whitson asked Mr. White if utilities were required to check the status of an abode as to whether or not it was a one or two-family prior to performing work. Mr. White stated utilities would be required to obtain permits in order to bring in new service. Unit 1 has a CO. Mr. Savarese asked how many meters there were. Mr. Brown replied that there are 2 meters for gas, electric and water.

Mr. Kennedy asked how many bedrooms/bathrooms were in Unit 1. Mr. Brown replied 2 bedrooms, 1 bath, the unit is occupied and there is a dedicated parking space. Ms. Halpern asked about an oil tank removal. The tank was removed before Mr. Brown purchased, and it appeared to have no leaks. Mr. White advised that both units could use the same oil tank. Mr. Foster asked when the CO was issued for Unit 1. Mr. Brown stated it was about a month ago. Mr. Kennedy elicited more information regarding the number of floors, separate entrances for both units, and proposed bedrooms/baths for Unit 2. There was discussion regarding taking space from Unit 2 to add to the area of Unit 1.

Mr. Foster asked Mr. Kennedy if there was any issue of abandonment of use. Mr. Witek didn't believe there was an abandonment issue. He said that but for the foreclosure, the previous owner would have continued the use. Mr. Foster asked how the property was being taxed. Mr. Witek did not have an answer, but knows the Borough considers it a pre-existing, non-conforming 2 family dwelling. Mr. Kennedy explained some case law regarding abandonment and the definition.

Mr. Kahle asked about previous COs being issued for 2 units. Mr. Witek replied that he did not know how the previous owner handled CO issues. He stated there was sufficient evidence to suggest that whether or not the prior owner did the right thing or not, but from all indications, it appears to be a 2 family.

Vice Chairman Whitson stated there are two issues: is it a one or two family house and whether or not the expansion is justified. Whichever the Board decides, that does not justify expansion in itself.

Allison Coffin, Applicant's Planner, was sworn and accepted as an expert in the area of planning. She provided testimony regarding the site: 2 family dwelling, pre-existing, non-conforming use, pre-existing, non-conforming bulk conditions (lot area, width and depth, side yard setback, lot coverage and habitable floor area.) She explained the Applicant is proposing to remove the existing rear dwelling and construct a new second dwelling attached to the primary structure. She discussed specific existing bulk non-conformities. She described the property location and the neighboring residences. She stated relief is requested for lot coverage, minimum habitable floor area, proposed habitable area. Ms. Coffin discussed the need for a D variance and applicable case law. She stated that the Applicant purchased a 2 family home, assuming it was a legal 2 family home, with the intent to use it as a 2 family. She discussed the minimum floor area required in R-1 and R-5 zones. Ms. Coffin explained how the proposed Unit 2 would be closer to meeting the requirements for a 2 family structure, where the existing is significantly undersized by any standard. In her opinion, granting the variance would not cause any detriment, and the use has existed on the site for decades without detriment. In summary, the proposed expansion improves the appearance, function, habitable floor area, the structure will be visually attractive, the intrusion over the side lot line is eliminated, improves the parking and includes a functional garage.

Regarding the bulk variances, Ms. Coffin testified that the variances can be granted under the C-1 hardship standard, lot width and depth variances are pre-existing. The new construction meets the required setbacks for the R-1 zone. Strict enforcement of the lot coverage would cause hardship. With respect to the flexible C standards, Ms. Coffin stated benefits of the variances outweigh the detriments. The replacement of the undersized unit with a newer, more attractive building is a benefit to the area.

There was discussion regarding the availability of purchasing adjacent land, currently under FMERA's control. Mr. White stated that area is zoned differently.

Mr. Savarese asked questions about parking. Ms. Coffin advised the proposal improves the function of the site by having a more formal and delineated parking area. Mr. Savarese expressed concern about the larger garage, increased impervious coverage and no recreation space. He stated he believed the garage would be used for someone's personal business and that coverage is a problem. Mr. Witek state the Applicant would be comfortable with a restriction to limit the use of the garage to the use of the tenants. Mr. Savarese asked if the garage could be removed from the application. Mr. Brown replied that he had no intention of using the garage for anything other than the 2 units using each space for storage. Mr. Savarese asked if the Applicant could change the orientation of the pavement to reduce the impervious coverage. Ms. Coffin suggested the impervious coverage could be reduced from 43.5 to 40 %. The Board could not agree to that.

Mr. Kleiberg asked when the 2nd meter was installed by JCP&L. Ms. Coffin replied it was 1969. Mr. Kleiberg stated that simply because there were 2 boilers and 2 water heaters does not indicate it was a legal 2 family.

Mr. Kahle asked for the maximum height for garages. Mr. White replied it was 15 ft. The Application proposes 17 ft., and would require an additional variance. Mr. Witek agreed to keep the garage within the 15 ft. requirement.

Ms. Halpern asked Ms. Smith if there was any way to obtain previous tax records. Ms. Smith advised the MOD-IV property tax card does not reference the property as a 2 family.

Mr. Foster noted there were many components to the application and asked if the Applicant had attempted to simplify it in order to reduce the number of variance requested. Mr. Witek replied that his question would be better directed toward the architect.

Vice Chairman Whitson asked if the intrusion on the side yard was legal. Ms. Coffin was unable to confirm. Mr. Witek assumed there was some mention of it in the title report. Vice Chairman Whitson asked how the Application would be considered a hardship under the D variance. Ms. Coffin stated hardship is not required for a D variance, but rather special reasons.

Mr. Tvrdik asked if Mr. Witek researched whether 2 CO's were issued at the time of purchase. Mr. Witek replied the only documents they received were those through the OPRA request.

PUBLIC:

Vice Chairman Whitson then opened the meeting to the public for questions of this witness only. As no one wished to be heard, Vice Chairman Whitson closed that portion of the meeting.

Mr. Witek introduced Anthony Ercolino, Applicant's Architect, who was sworn, presented his qualifications and was accepted as an expert in the area of Architecture. Mr. Ercolino provided testimony describing the existing property and the proposed changes. Mr. Ercolino also discussed an elevation diagram. Regarding his design, Mr. Ercolino stated the task was to create a conforming Unit 2, maintaining setbacks and keeping similar in architecture to Unit 1. Based on his training and experience, he stated that for the proposed use, it was the optimum plan for the site.

Mr. White asked why there were so many closets on the second floor of Unit 1. Mr. Ercolino replied that they were under roof, very low headroom. The bedrooms are the only habitable space. Mr. White requested clarification of habitable floor areas for both units, and Mr. Ercolino provided copies of **A-6**. Mr. White also expressed concern about tightness of parking and the width of driveway. It doesn't need a variance, but it will need a design waiver.

Mr. O'Brien expressed concern about the height of the second floor of Unit 1, which Mr. Ercolino stated is existing, and conforms with UCC standards, but not the Borough's.

Mr. Foster asked if the closets for Unit 1 are included in the habitable living area, but Mr. Ercolino stated none of those closets fit into the habitable square footage. The revised drawings (**A-6**) reflect measurements to the interior of the walls rather than the outside. Therefore, the closet space is not factored into the square footage. Mr. Foster asked if there were plans for the garage. Mr. Witek responded that if removal of the garage would make the Application more palatable to the Board, it was something that Mr. Brown would consider. There was discussion regarding removal of the garage and impervious coverage impact.

Ms. Halpern asked what predicated the width of Unit 2 and having 3 bedrooms, where Unit 1 had 2 bedrooms. Mr. Ercolino stated that initially, Mr. Brown thought he would be using Unit 2. He discussed the need to accomplish a total of 35' of side setbacks. Ms. Halpern had questions about exits for each unit.

Mr. Kahle stated he wasn't convinced it was a legal 2 family. Mr. Kleiberg agreed with that position. Mr. Savarese expressed concern about the coverage, the issue of a 2 family, but would like the site cleaned up, and he also wasn't convinced about anything. Mr. Tvrdek agreed that he wasn't convinced it was a legal 2 family.

Mr. Witek stated that the Applicant's OPRA request didn't specifically request CO's. He requested to carry the Application and allow for additional time to explore more information about CO's and the property status as a 2 family.

PUBLIC:

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

Vice Chairman Whitson advised the Application will be carried to a date certain, September 11, 2018, with no need for re-notification. Mr. Kennedy confirmed that the Application will be carried to September 11, 2018 without the need for any further public notice and asked Mr. Witek to consent to extend the timeframe within which the Board has to act, to which Mr. Witek agreed.

VIII. Resolutions: None

IX. 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.

X. Adjournment: As there was no further business, the meeting was adjourned at 8:55 p.m. on a motion by Mr. Foster which was seconded by Mr. O'Brien and approved by the Board.

Respectfully submitted,

JEANNE SMITH
Secretary