BOROUGH OF OCEANPORT

PLANNING/ZONING BOARD

MINUTES ● MARCH 26, 2019

Regular	**Maple Place School**	**7:30 PM**
	2 Maple Place, Oceanport, NJ 07757	

I. **Call to Order:** Acting Chairman Whitson called the meeting to order at 7:30 p.m.

II. **Open Public Meetings Statement:** This meeting complies with the Open Public Meetings Act by notification on January 9th and 11th, 2019 of this location, date and time to the Asbury Park Press and the LINK News and by the posting of same on the municipal bulletin board and Borough Web Site.

III. **Flag Salute:** Acting Chairman Whitson led the Board and audience in the flag salute.

IV. **Roll Call:**

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

V. **Board Business - None:**

VI. **Old Business - None:**

VII. **New Business:**

1. PB2018-01 275 Port Au Peck Associates

275 Port Au Peck Avenue
Block 65, Lot 4
Major Subdivision

Mr. Kennedy asked if anyone had any questions regarding the sufficiency of the notice from the Applicants. John Freehouse stated notice was close to the meeting date. Mr. Kennedy explained New Jersey's law requiring 10 days' notice for advertisement and notice to properties within 200 feet. The Applicants provided compliance with the law. Mr. Freehouse stated the notice was not accurate because plans were supposed to be available for review between 9 and 4, but Borough Hall closes early on Fridays. Ms. Smith explained that the sample notice provided to Applicants says "posted business hours" and perhaps the attorney used an old form. Mr. Kennedy confirmed that Mr. Freehouse did have an opportunity to review the Application. Mr. Kennedy stated that service had been reviewed, was in order and the Board accepted jurisdiction. Mr. Kennedy entered Exhibits **A-1** through **A-9** into the record.

Exhibits

A-1 Land Use Development Application of 275 Port Au Peck Ave Associates LLC
A-2 Abbreviated Environmental Impact Statement, prepared by DW Smith Associates LLC, dated February 13, 2019.
A-3 Memo prepared by Brinkerhoff Environmental Services, Inc., dated February 13, 2019.
A-4 NJDEP Letter of Interpretation dated April 17, 2018
A-5 Wetlands Delineation Plan prepared by DW Smith Associates, LLC dated December 1, 2017, last revised April 12, 2018.
A-6 Major Subdivision Plan prepared by DW Smith Associates, LLC, dated December 15, 2017, last revised February 7, 2018.
A-7 Preliminary and Final Major Subdivision, 6 Sheets, prepared by DW Smith Associates, LLC, dated December 6, 2018.
A-8 Boundary Survey, prepared by DW Smith Associates, LLC dated March 20, 2012, last revised December 18, 2017.
A-9 Maser Consulting Review letter dated February 22, 2019
A-10 Oceanport Planning Board Resolution PR-07-23, dated December 12, 2007
A-11 Oceanport Planning Board Resolution PR-07-23 - Amended, dated Sept. 22, 2010
A-12 Deed of Title, Mary Mazza to Peter De Cenzo, Jr. and Santa De Cenzo, Deed Book 4091, Page 794, dated April 5, 1978.
A-13 Aerial Photograph with Lot Line Overlay, prepared by DW Smith Associates, LLC, dated December 6, 2018.
A-14 Photographs of Site, 3 Pages, taken by John Anderson, Applicant's Attorney, taken within last 10 days of hearing.

The following persons were sworn in: William White, Board Engineer. John Anderson, Attorney for the Applicants stated the principals of 275 Port Au Peck Associates were Dominick Mazza and James Mazza. There were no conflicts noted.

Mr. Anderson explained that the Application is for a major subdivision of a 6 plus acre lot into 3 lots, 2 of which are buildable, fully conforming and proposed for future development as single-family homes. There are no immediate plans for the third parcel. A major subdivision is needed because of frontage/lot width at Colonial Dr. in the rear. Mr. Johnson cited NJ Supreme Court cases Kauffman and Green Meadows and discussed the similarities between those 2 cases and this Application. Mr. Anderson entered Exhibits **A-10** through **A-14** into the record.

Mr. Tim Lurie, Applicant's Engineer/Planner, was sworn, presented his qualifications and was accepted as an expert in the field of Engineering and Planning. Referring to **A-13,** Mr. Lurie described the 6.43acre site with frontage on Port Au Peck Ave. with access through Colonial Dr. the site has a valid LOI, verified and approved by the DEP, 150' wetlands buffer associated with it, and eagle's nest in the northwest corner. The property was part of the LSRP clean up program because it contained old buried construction debris. He explained the lot sizes were reduced from 140 ft to 130 because of the eagle's nest. The 2 lots fronting Port Au Peck are clean lots. Mr. Lurie explained the lot size requirement for Zone R3 is 12,000 sq. ft. The Applicant is proposing Lot 4.01 at 16,568 and Lot 4.02 as 17,550 sq. ft., which are conforming for front, rear and side setback, lot width and lot depth. The 3rd lot 4.03 will be 246,232 sq. ft. That lot requires a lot width variance because Colonial Dr. dead ends at the eastern property line. Mr. Lurie testified that installing a cul-de-sac to eliminate the need for the lot width variance. However, the Applicant is proposing to just dead end the lot, leaving Colonial Dr. unchanged.

Mr. Lurie provided information regarding capping asbestos on the property and the moratorium on work being performed from December through July because of the eagle's nesting period and the eagle's status as threatened/endangered.

Mr. Lurie discussed the standards for C-1 and C-2 variances and explained why the Applicant will not propose a cul-de-sac and will not impact the 150 ft. wetlands buffer. Mr. Anderson suggested that installing a cul-de-sac would create a road with no homes, thereby creating an attractive nuisance. Mr. Lurie testified that there will be no substantial detriment to the public good or impairing the zone plan or zone ordinances. Mr. Lurie also testified regarding the positive criteria for the C-2 variance where it promotes the overall purposes of the MLUL and encourages purposes A, I and E under the MLUL. Mr. Anderson introduced Exhibit **A-14** and noted that the Application will contribute to a desirable visual environment. Mr. Lurie testified the proposed development would fit in with the character of the neighborhood.

Mr. Lurie discussed the Kauffman and Green Meadows court cases and how this plan advances those zoning goals. Mr. Lurie described the similarities between the 2 cases and the current Application. The Court stated it was to seek a balance of economic growth with enhanced housing and opportunities through residential infill development sensitive to the scale and character of the surrounding residential homes. Dividing the larger lot into conforming lots are more harmonious with the neighborhood.

Mr. White asked how many truck trips would be required to add another foot of cap. Mr. Lurie stated the 2 ft. cap was approximately 40 truckloads, so he estimated 20 truckloads. Mr. White asked where the site will be accessed to accommodate the fill. Mr. Lurie advised that the Applicant will provide an easement to maintain the same traffic pattern to bring in fill during the 1st allowable activity period and stockpile on site for distribution during the 2nd allowable activity period. Mr. White asked for clarification of the easement restriction. Mr. Anderson referred to **A-12** and explained that the easement created a 50 ft buffer around the adjacent lot and within the Applicant's lot and restricts any kind of development by the Applicant or any person who would acquire 4.02 in the future. Mr. White expressed concerned that there will be numerous trucks coming off a dead-end street which would impact the neighborhood and preferred stockpiling. Mr. Lurie stated there is 50 ft between the proposed homes which could provide access through the center of the subdivided lots.

Mr. Anderson expressed concern about swales suggested by Mr. White and if the swale is proposed for the 50 ft easement area, the Applicant may be limited by prior restraints or encumbrances on the Applicant's title from locating there. Mr. Anderson stated the homes show on the exhibits are demonstrative and the Applicant is not requesting approval for any specific homes at this time, just conforming lots. Mr. Lurie stated the Applicant will place shade trees along Port Au Peck.

Mr. Proto asked about plans for Lot 4.02 after the additional cap. Mr. Lurie advised there were no future plans, just to finish capping and getting final approval from the DEP as part of the LSRP program. Mr. Proto expressed concern that the Applicant was trying to get 2 bites at the apple by getting the subdivision for the conforming lots, filling in Lot 4.03 and then the Applicant returning later for another subdivision on 4.03. Mr. Lurie replied that because of the eagle's nest, that implies limits. Mr. Proto asked if the lot would be deed restricted.

Mr. Dominick Mazza, 1051 Hope Rd., Tinton Falls, Principal/Applicant, was sworn. Mr. Proto asked Mr. Lurie if there was an immediate plan for the development of the plot, which Mr. Lurie replied there was not. Mr. Anderson stated he would not recommend that a client offer a deed restriction to a 5-acre lot, didn't know if it was feasible to develop the parcel. If that decision was made, it would have to be brought before the Board for approval. Mr. Lurie pointed out the 150 ft wetlands buffer. Mr. Mazza and Mr. Proto had discussion regarding development of Lot 4.03.

Mr. Foster asked if Mr. Lurie was an LSRP. Mr. Lurie is not, but has worked with LSRP Laura Brinkerhoff for many years on this project. Mr. Foster asked questions about runoff issues, elevations and water collection. Mr. Lurie replied that Port Au Peck is the highest elevation and grades to the existing wetlands. There was discussion between Mr. Foster and Mr. Lurie regarding capping. Mr. Anderson read from **A-3**. Mr. Kahle asked for clarification regarding stockpile, filter and fill. Mr. Lurie replied that there is 50 feet between the proposed houses and access for the site. Mr. Anderson relayed Mr. Mazza's comments that he has a sensitivity level to neighbors' concerns regarding stockpiling and construction access.

Mr. Kleiberg asked about remaining acreage after building, which Mr. Lurie stated would be about 2 acres. Acting Chairman Whitson asked what would happen to neighbors after stockpiling on a windy day. Mr. Lurie stated the stockpile would be stabilized in accordance with Freehold Soil

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

John Drahos, 28 Colonial Dr., was sworn and asked questions regarding outlines and marks on the map regarding wetlands and wetlands buffer. Mr. Lurie explained that at the 50 foot front setback, there are 50 feet of wetlands, which is why there is a variance. Mr. White stated the lot width was insufficient, which is why the plan changed from minor to major subdivision. The frontage on Colonial is only 50 feet, despite the large size of the remaining lot. There was discussion regarding the lots fronting on Port Au Peck and their setbacks. Mr. Drahos had additional questions regarding shade trees on Colonial Dr. Mr. Laurie advised that any plantings would have to be wetlands-type species planting. Mr. White stated no plantings were permitted in the buffer. Mr. Anderson asked Mr. Lurie if there were any areas that were off limits for development. Mr. Lurie confirmed that the area contiguous with the northern side of Colonial would be off limits.

Larry Russomano, 36 Revere Dr., was sworn and expressed concern about runoff affecting his property. Mr. Kennedy stated Mr. Russomano was referring to **A-13.** Mr. Anderson confirmed the location of Mr. Russomano's resaidence. Mr. Lurie replied that the Applicant will maintain the same drainage patterns which flow to the rear of the property and swales will be developed to divert water from his property.

Kenneth Gambella, 494 Branchport Ave., was sworn, also expressed concern about runoff and standing water near Colonial and asked if there was any plan to address the standing water. Mr. White asked Mr. Laurie about the current ground cover. Mr. Laurie testified that it was grass, and after completion, there would be no change to the drainage pattern same volume before the area was disturbed. Mr. Foster questioned the permeability and types of soils at the location. Mr. Lurie explained the types of soil, associated slopes and infiltration rates.

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

PUBLIC:
Acting Chairman Whitson opened the meeting to the public for statements on the application.

Karen Long, 32 Revere Dr., was sworn and stated she had documentation to prove that the property is contaminated. She stated there were no plans when she received her notification. She stated nothing was supposed to be built on the location until DEP approval. She recognized there has been excavating, but stated that contaminated property was uncovered and not wet down during the summer months. She stated neighbors' homes have had to be examined for asbestos and the Applicants have acted very irresponsibly. She stated the Applicants should not be granted anything until there is something to grant it for. She stated that the area is very marshy and adding more soil isn't going to help. She didn't understand the need for additional capping or future borings.

Acting Chairman Whitson asked Mr. White if the front two lots were contaminated. Mr. White stated that based on the information submitted, the lots were clean. Mr. Foster asked Mr. White if the remediate met the requirements for the DEP and CAFRA and if the LSRP certified that when they submitted reports. Mr. White stated that he was not an LSRP, and explained that LSRP's basically act as DEP on sites. Mr. White opined that the subject of remediation was not appropriate for the Board. The Applicant is merely looking for a subdivision with a single variance.

Councilman Proto commented that after being on the Board for 3 years, he has not witnessed an application where the Board was being asked to create a subdivision and as part of the subdivision, the Board is creating a lot that has potential to be subdivided again. Mr. Kennedy stated that the Application is for the subdivision to create the 3 lots and any applicant may return to request a further subdivision if requirements were met. Mr. Anderson concurred with Mr. Kennedy that the Board was being asked to approve a particular plan to create certain lots. Mr. Anderson also discussed deed restrictions and future subdivisions. Mr. Anderson requested a 5-minute recess to discuss deed restriction with his client.

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

RECESS:

At 8:58 pm the Board took a 5-minute recess with no objections. At 9:09 pm the meeting resumed with all Board Members present.

Mr. Anderson stated that it was a very challenging and difficult question. His recommendation to Mr. Mazza was to not agree to any voluntary deed restriction against further subdivision. He advised that Mr. Mazza and his partner would be willing to deed restrict the property while they are owners, but would be willing to entertain a conveyance of the remaining lot to the Borough if the Borough wished to explore ways to use it for a public purpose. Councilman Proto stated his belief that the Borough would not be interested in undertaking a potential liability with the contaminated site. There was additional discussion regarding deed restriction and applicable case law. There was further discussion regarding installation of a cul-de-sac and reconfiguration of proposed Lot 4.03. Mr. White opined that reconfiguration would be a negative impact on the environment, neighbors and traffic. Mr. Savarese asked if there was a way to tie the approval of the 2 front lots to a clean Lot 4.03. Acting Chairman Whitson asked if the DEP required the Applicant to do the capping. Mr. Anderson replied yes, but was not aware of any particular timetables. There was additional discussion regarding the timeline for capping Lot 4.03. Mr. Anderson discussed the fact that there are "sunset" provisions for approvals. Mr. White stated that once the subdivision is approved and lots are created, development doesn't matter. Mr. Kennedy add that if the subdivision is approved, one of the conditions will be that the Applicant needs to perfect the subdivision in accordance with NJ law.

Mr. Foster commented that subdivisions must comply with the Borough's Master Plan and the Board must look at the rights and privileges of the property owners. Mr. Foster stated that the Board must assume that the expert testimony and documents produce are accurate. While environmental concerns are valid, according to the DEP and LSRPs, the site has been remediated. Mr. Kennedy read conditions of approval into the record.

2. Motion to Approve Application for Major Subdivision with Lot Width Variance

RESULT:	**ADOPTED [4 TO 2]**
MOVER:	Joseph Foster, Environmental Commission Liaison
SECONDER:	James Whitson, Vice Chairman
AYES:	Whitson, Foster, Kahle, Kleiberg
NAYS:	Proto, Savarese
ABSENT:	Widdis, Davis, Halpern, Tvrdik, Motzenbecker

VIII. Resolutions:

1. PR-19-11 Resolution of Approval - NJ City University

Acting Chairman Whitson advised that Board members had requested additional time to review the lengthy document and carry to the next meeting for action. Mr. Kleiberg made a motion to carry the PR-19-11 to the April 9, 2019 meeting which was seconded by Mr. Foster.

RESULT:	**WITHDRAWN [UNANIMOUS]**
MOVER:	Robert Kleiberg, Class IV
SECONDER:	Joseph Foster, Environmental Committee Liaison
AYES:	Whitson, Proto, Foster, Kahle, Savarese, Kleiberg
ABSENT:	Widdis, Davis, Halpern, Tvrdik, Motzenbecker

IX. Petitions from the Public: Acting Chairman Whitson opened the meeting to Petitions from the Public. There was a brief exchange between the Chairman and a member of the public on the approval of the application just presented. As no one else from the public wished to be heard, Acting Chairman Whitson closed that portion of the meeting.

X. Adjournment: As there was no further business, the meeting was adjourned at 9:43 pm on a motion by Mr. Savarese, which was seconded by Mr. Foster and approved by the Board.

Respectfully submitted,

Jeanne Smith
Board Secretary