OCEANPORT PLANNING BOARD
MINUTES
February 27, 2018

Vice Chairman Whitson called the meeting to order at 7:30 p.m. and gave the Statement of Compliance with the Open Public Meetings Act: "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."

Vice Chairman Whitson led the flag salute.

MEMBERS PRESENT: Mr. Sullivan, Councilman Proto, Mr. Foster, Mr. Kleiberg, Mr. Kahle, Ms. Halpern, Mr. Savarese, Mr. Tvrdik, Mr. Whitson

MEMBERS ABSENT: Mr. O'Brien, Mr. Widdis

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

BOARD BUSINESS:

1. Minutes of the meeting of December 12, 2017 were approved as presented on a motion from Mr. Kahle and a second from Ms. Halpern and approved by the eligible Board members.

OLD BUSINESS:

2. PB2016-14 Sopenoff, Adam & Jasmine
   1217 Turf Drive
   Block 130, Lot 10
   REMAND from Superior Court

A-1 Plot Survey Block 130, Lot 10, Borough of Oceanport, Monmouth County, New Jersey, prepared by Seneca Survey Co., Inc., dated June 25, 2014.

A-2 Plot of Proposed Deck and Stairs on Plan of Survey with Colored Boundary Lines, Block 130, Lot 10, Borough of Oceanport, Monmouth County, New Jersey, prepared by Seneca Survey Co., Inc., dated June 25, 2014.

A-3 Color Photograph of Applicant's Rear Side Yard
A-4 Color Photograph of Neighbor's deck
A-5 Photo of neighbor's deck/stairs
A-6 3 Sheets, Lot 1 Oceanport Building Department record
A-7 MLS listing for 1719 Turf Dr.
A-8 Photo board of Homes on Turf Drive with 2nd Story Deck

O-1 Photograph taken from 1214 Turf Dr. backyard facing 1217 Turf Dr. backyard
O-2 Photograph taken from 1214 Turf Dr. front window to rear of 1217 Turf Dr.
O-3 Photograph taken from 1214 Turf Dr. 2nd floor master bedroom to rear of 1217 Turf Dr.
O-4 Photograph taken from 1214 Turf Dr.1st floor patio toward rear of 1217 Turf Dr.
O-5 Photograph taken of fence line of 1214 and 1217 Turf Dr.
O-6 Photograph of rear of 1214 Turf Dr. 1st floor living room & 2nd floor bedroom windows
O-7 Photograph of sides of 1214 and 1217 Turf Dr.
O-8 Photograph of view from 1214 Turf Dr. – view of both homes
O-9 Photograph of rear deck and steps at 1214 Turf Dr.
O-10 Photograph of rear deck at 1214 Turf Dr.

Peter Falvo, Esq., Attorney for the Opposition, advised the Application was before the Board due to a remand from the Superior Court. Mr. DeNoia explained the court process and reasoning that returned the Application to the Planning Board. Board members must express their reasons in support or denial of the Application. Mr. DeNoia stated for the record that service had been reviewed, was in order, and the Board accepted jurisdiction.

The following persons were sworn in: William White, Board Engineer/Planner; Jasmine Sopenoff, Applicant/Owner. Mr. Falvo elicited testimony from Ms. Sopenoff regarding **A-1,** layout of the bi-level home, interior and exterior home improvements, including a 2nd floor sliding glass door; **A-2,** the proposed deck and stairway over the patio; **A-3**, photograph of Applicant's rear yard view; **A-4**, photograph of rear yard neighbor's deck. Ms. Sopenoff testified about other decks in the neighborhood and egress from the house in the event of an emergency. She testified that with the exception of the rear yard neighbor, no other neighbors objected to the deck. Mr. White asked if the setback was similar to other decks in the neighborhood. Ms. Sopenoff indicated that the lot is an odd shape. Councilman Proto asked if the sliding glass doors were functional. Ms. Sopenoff advised that blocks of wood prevent the door from being opened. Mr. Foster asked for the dimensions of the patio below the proposed deck. Ms. Sopenoff advised it is about 1 to 2 ft larger than the deck. Mr. Foster asked the distance between to the fence to the property on the northeast. Mr. Falvo referred to **A-2**, indicating it was 8 ft. Mr. Foster asked for a description of the property to the south, which Ms. Sopenoff described as a split-level with a small landing leading to a ground level patio. Mr. Foster asked for a description of Lot 2, and Ms. Sopenoff advised the owners of that property were present in the audience. Mr. Sullivan asked the height of neighbors' decks, which Ms. Sopenoff guessed to be about 9 ft. Mr. Falvo introduced **A-5**, which was identified by Ms. Sopenoff.

Mr. Kahle recalled a previous discussion regarding moving the deck to increase the distance from the property line. He also asked who owned the fence between Lot 1 and the Applicant's, and Ms. Sopenoff advised it was her rear yard neighbor's. There was additional discussion regarding fences and relocating the deck to align with the sliding door. Mr. Savarese offered design suggestions to make the desk less intrusive to the neighbors.

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

Albert Rescinio, Esq. appeared on behalf of Scott and Paulette Moeller, the owners of Lot 1 and objectors of the Application. Mr. Rescinio elicited information regarding the timeline of renovation of the home, notice to and discussions with neighbors about the Application, decks existing in the neighborhood and ingress/egress to the home. Vice Chairman Whitson asked about lighting. There was discussion between Vice Chairman Whitson and Mr. White regarding location of the deck and setbacks.

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

Based on information received through an OPRA request, Mr. Falvo introduced **A-6**, and reported on the dimensions of the next-door neighbor's deck.

Mr. Falvo introduced Dianna Olson, Applicant's Licensed Realtor was sworn in. Mr. Falvo asked Ms. Olson questions about her real estate sales and the value of decks on bi-levels. She opined that the Sopenoffs have greatly improved the appearance of the home. Ms. Olson introduced and explained **A-7**. Mr. DeNoia asked for Ms. Olson's experience and qualifications, which she provided. Ms. Olson provided additional testimony regarding decks in the real estate industry.

Ms. Halpern asked questions regarding **A-7.** Mr. Foster asked for the positive and negative criteria from Ms. Olson. She testified the deck would add value to the home, described the renovations the Applicants have made, which added to the value of the home and the neighborhood.

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

Eric Muller, Esq., co-counsel for the Objector/Moellers, asked Ms. Olson if she was an appraiser, which she is not. Ms. Olson was unable to answer Mr. Muller's questions because she had not performed a market analysis on the Moellers' property.

Michael Venezia, 1211 Turf Dr., was sworn and showed a picture of the view of the rear of the Applicant's home from the front of his home. He asked if Ms. Olson believed that a project that required a variance would negatively impact sales of neighboring homes. Ms. Olson would not answer a hypothetical question. Councilman Proto asked Mr. Venezia questions about the distance. Vice Chairman Whitson asked how many 2nd floor decks were in the general vicinity. Ms. Olson advised 3 to 4 were in the area.

Barbara Ehlen, Professional Planner for the Applicant, was sworn, presented her qualifications and was accepted as an expert in Planning by the Board. Mr. Falvo asked Ms. Ehlen questions regarding site visit, document and correspondence review and Borough Ordinance and Master Plan. Ms. Ehlen presented and described **Exhibit A-8** a photo board of existing homes on Turf Drive having a 2nd story deck. She provided her interpretation of setbacks.

At 8:58 PM, the Board entered a 5-minute recess on a motion by Mr. Kahle, which was seconded by Mr. Foster and approved by the Board. At 9:12, the Board returned to regular session. There was discussion regarding definition of rear yard. Mr. White explained it is an odd shaped lot and the definition of rear yard line comes from the Borough's 1955 code.

Peter Steck, Professional Planner for Objectors/ Moeller's, was sworn in and provided his qualifications and was accepted as an expert in Planning. He provided testimony regarding the definitions of rear yard line and rear yard in the ordinance. Ms. Ehlen disputed Mr. Steck's interpretation of the definition and stated there was no stable width on the lot. She also stated measurements are taken from the side lot lines to the deck. Mr. White stated that the lot will need a variance because it is an undersized lot. Mr. Steck replied that the two definitions need to be read together. A common-sense reading of the ordinance defines the area as a rear yard, and the Applicant's notice was to seek a rear yard setback variance, not a rear yard line. Mr. Rescinio noted that it was unfair for the Board members and the public to have an incorrect notice. Ms. Halpern stated that the plans were available for review prior to the hearing by all Board members and the public. Ms. Smith stated no new plans were submitted. Mr. Falvo advised the Applicants are willing to submit a revised set of plans showing the stairs closer to the house in order to meet the 40' setback. There was discussion regarding the issues of notice and the need for a variance. Mr. White stated the definition was flawed because you couldn't measure from the rear lot line perpendicular to the building on this property. Mr. DeNoia stated the Board must follow the ordinance as it is now written. Mr. White stated his professional opinion was that if the Applicant can move the stairs and provide 40' from the 10.11' segment of rear property line, then the Applicant would be in compliance and recommended Board approval. Mr. DeNoia stated the Board has met the requirements of the Judge's order by hearing the matter within 30 days, but suggested the Board needs additional information to make a decision.

Mr. Falvo agreed to amend the application based on Mr. White's opinion that a side yard variance was not required because the deck would be moved, and a rear yard setback of 37.5' proposed where 40' is required. Ms. Elhen described the project, including providing additional living space and a secondary egress for the main floor. She introduced and described **A-8**. She discussed consistency with the Master Plan, qualifications for the C-1 and C-2 variances, positive and negative criteria.

Mr. Rescinio asked questions regarding Ms. Elhen's determination of the rear yard line, side yard lines and the 2.5' rear variance, movement of the deck towards the center of the home, decks and pools in the neighborhood.

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

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

Paul Hatem, 1244 Turf Dr., was sworn and stated that he can see the deck on Lot 1 (Moellers') from his property and felt it made the property part of the neighborhood. He testified the Sopenoffs have improved and enhanced the neighborhood.

Don Vaugh, 1209 Turf Dr., was sworn and stated that his parents bought his home from the developers in 1962 and has lived in the neighborhood literally all his life. He stated the previous owners of 1217 Turf Dr. had a deck on the house, which was eventually torn down because of lack of maintenance. He congratulated the Sopenoffs for the improvements to the condition and enhancing the neighborhood.

Diana Olson, Heritage House Sotheby's International Realty, previously sworn, stated that the deck adds an improvement and value to the home and that Lot 1 is now a rental property.

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

At 10:20 PM, the Board adjourned for a brief recess. At 10:26 PM, the Board returned to regular session.

Paulette Moeller, Objector, was sworn and testified regarding ownership of 1214 Turf Dr, and described the condition of 1217 Turf Dr. in 2002 when she purchased 1214 Turf Dr., described **Exhibits O-1, O-2, O-3, O-4, O-5, O-6, O-7, O-8,** and **O-9,** dimensions of the rear deck at 1214 Turf Dr., privacy issues, and negative impact on property value. Mr. Rescinio introduced **Exhibit O-10**, which Ms. Moeller described.

Vice Chairman Whitson asked Mr. Rescinio for an estimate of how much more testimony he would be presenting. Mr. Rescinio advised he had further testimony from Objector's Professional Planner and Mr. Moeller. Due to the late hour, it was agree that Ms. Moeller be allowed to complete her testimony.

Ms. Moeller continued testifying regarding the condition of 1217 Turf Dr. and the impact of improvements on the value of her home and privacy issues. Mr. Falvo examined Ms. Moeller regarding the view from 1214 Turf Dr. and privacy issues for 1217 Turf Dr.

Afterwhich, and with no objections from the Board, the matter was carried to the April 24, 2018 meeting with no additional notice requirements.

RESOLUTIONS:

3. PR-18-07 Ward, Edward & Tara – As the resolution had been previously provided to the Board, Mr. DeNoia summarized the Resolution after which Mr. Foster made a motion to approve the resolution which was seconded by Mr. Kahle and received the following roll call:

AYES:	Mr. Sullivan, Councilman Proto, Mr. Foster, Mr. Kahle, Mr. Tvrdik, Mr. Whitson
NAYES:	None
ABSTAIN:	None

ABSENT: Mr. O'Brien, Mr. Widdis
INELIGIBLE: Mr. Kleiberg, Mr. Savarese, Ms. Halpern

Ms. Smith stated the motion carried.

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.

ADJOURNMENT: As there was no further business, the meeting was adjourned at 11:04 p.m. on a motion by Councilman Proto which was seconded by Mr. Savarese and approved by the Board.

Respectfully submitted,

JEANNE SMITH
Secretary