



BOROUGH OF OCEANPORT

PLANNING/ZONING BOARD

MINUTES • FEBRUARY 23, 2021

Regular

REMOTE/VIRTUAL

7:00 PM

Clement V. Sommers Municipal Building, 910 Oceanport Way, Oceanport, NJ 07757

- I. **Call to Order:** Chairman Widdis called the meeting to order at 7:00 PM.
- II. **Board Policy:** Chairman Widdis advised the public of the below Board policies:
- It is Board Policy that no application will be opened after 9:30 P.M.
 - No new testimony will be taken after 10:00 P.M., except at the discretion of the Board.
- III. **Open Public Meetings Statement:** This meeting complies with the Open Public Meetings Act by adequate and electronic notification on January 22, 2021 of this virtual/remote meeting and its location, date and time to the Asbury Park Press, Star Ledger and Two River Times and by the posting of same on the municipal bulletin board and Borough's Web Site. Chairman Widdis then read the virtual/remote meeting advisory advising the public how to attend and participate during public portions of the meeting as detailed on the meeting agenda.
- IV. **Flag Salute:** Chairman Widdis led attendees and members of the Board in the flag salute.

V. **Roll Call:**

Attendee Name	Title	Status	Arrived	Departed
Christopher Widdis	Chairman	Remote		
James Whitson	Vice Chairman	Remote		
Patty Cooper	Mayor's Designee	Remote	7:11 PM	
Thomas Tvrdik	Class III	Absent		
Joseph Foster	Environmental Committee Liaison	Remote		
John (Jack) Kahle	Class IV	Remote		
Michael Savarese	Class IV	Absent		
Robert Kleiberg	Class IV	Remote		
Darren Davis	Class IV	Remote		
Michael Dailey	Alternate I	Remote		
Jeanne Smith	Board Secretary	Present		
Kevin Kennedy	Board Attorney	Remote		
William White	Board Engineer/Planner	Remote		

VI. **Board Business:**

1. Approval of Minutes - Sep 8, 2020

RESULT:	ACCEPTED [6 TO 0]
MOVER:	James Whitson, Vice Chairman
SECONDER:	Joseph Foster, Environmental Committee Liaison
AYES:	Widdis, Whitson, Foster, Kahle, Kleiberg, Davis
ABSTAIN:	Dailey
ABSENT:	Cooper, Tvrdik, Savarese

2. Report of Pending Applications - Ms. Smith advised of upcoming applications for the March 9th and March 23rd meetings and when plans would be available.

Ms. Smith advised of submission by the Oceanport Board of Education for a capital presentation of the final design for improvements at Wolf Hill School. Due to the agenda schedule, next available agenda was not until April and requested of the Board a Special Meeting on March 2, 2021. There was discussion concerning availability for the date. After which Ms. Smith was authorized to schedule a special meeting for March 2, 2021 and provide notice in accordance with law. Ms. Smith next advised that the Attorney for the Allison Hall application had requested the Board's consideration of a special meeting for their hearing in advance of the rescheduled date of April 13, 2021 and that only their matter be on the agenda in order to have sufficient time to present all testimony. Ms. Smith advised that the earliest available date would be March 16. There was discussion amongst the Board regarding availability and accommodation after which Ms. Smith was authorized to schedule a special meeting for March 16, 2021 for the sole purpose of the Allison Hall application subject to payment of the required fee for special meetings and appropriate notice.

VII. Old Business:

1. Resolution of Approval - 29 Mohawk Ave - As the Resolution had been previously provided to the Board, Mr. Kennedy summarized the resolution and conditions, which Mr. Davis made a motion to approve the Resolution, which was seconded by Mr. Kleiberg and received the below roll call:

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Darren Davis, Class IV
SECONDER:	Robert Kleiberg, Class IV
AYES:	Widdis, Whitson, Cooper, Foster, Kahle, Kleiberg, Davis, Dailey
ABSENT:	Tvrdik, Savarese

2. Resolution of Approval - Somerset Development/Ft. Monmouth Lodging Parcel - As the Resolution had been previously provided to the Board, Mr. Kennedy summarized the resolution and conditions. There was discussion concerning additional language clarifying the responsibilities including streets, trash removal, plowing services, prohibition of generators, design of Riverwalk, and the use of the Borough's affordable housing administrator. Mr. Whitson made a motion to approve the Resolution as amended, which was seconded by Mr. Foster and received the below roll call:

RESULT:	ADOPTED AS AMENDED [UNANIMOUS]
MOVER:	James Whitson, Vice Chairman
SECONDER:	Joseph Foster, Environmental Committee Liaison
AYES:	Widdis, Whitson, Cooper, Foster, Kahle, Kleiberg, Davis, Dailey
ABSENT:	Tvrdik, Savarese

VIII. New Business:

1. PB2020-01 Sempkowski, Anthony
74 Cayuga Ave
Block 27, Lot 9

EXHIBITS:

- A-1 Land Development Application
- A-2 Variance Plan prepared by Geller Sive & Company dated December 12, 2020
- A-3 Final As-Built Survey of Property, prepared by DPK Consulting, LLC, dated January 31, 2020
- A-4 Architectural Plans, 8 Sheets, prepared by Ronald Kacmarsky Architectural Group, last revised March 2, 2020
- A-5 Maser Consulting Review Letter dated January 21, 2021

Mr. Kennedy asked if there was anyone from the public with a question as to the sufficiency of the notice. Ms. Smith provided the public with options to participate. While waiting for the public to call in, Mr. Kennedy described and marked Exhibits A-1, A-2, A-3, A-4 and A-5. As there were no objections to the notice Mr. Kennedy advised he and the Secretary had reviewed and found the notice to be in order.

The following persons were sworn in: William White, Board Engineer/Planner and Anthony Sempkowski, Applicant/Owner and Robert Sive, Applicant's Engineer.

There was an issue with Mr. Sempkowski's webcam not displaying so Walter Toto, Attorney for the Applicant, requested to move forward with Engineer's testimony. Mr. Sive presented his qualifications and was accepted as an expert in engineering.

Walter Toto, Attorney for the Applicant, described the application seeking variance relief to complete the construction of the Applicant's single-family home after damaged in Superstorm Sandy, building permits were issued for certain aspects of the home and a good deal of the work was completed but due to misunderstandings variance relief was necessary. He asked Mr. Sive to provide testimony concerning the engineering aspects of the plan.

Mr. Sive, displaying Exhibit A-2, provided testimony concerning the technical issues in response to Board Engineer's review letter related to flood damage prevention ordinance; requirements for elevation of utilities with the Applicant's utilities not compliant, reviewed the 3 items in question including the AC condenser platform which was 11.4' elevation, about 1.3' below design elevation at the rear of the dwelling, the elevation of the electric panel on the easterly side of house with bottom of panel at 9.8' elevation 10, the wires come in from the bottom; the generator panel elevation bottom at 10.6' and seeking variance relief as the items are above the base flood elevation but do not meet the Borough's additional 2.4' of freeboard. Mr. Sive explained that the Borough's ordinance does provide a procedure for granting variances for utilities in this case and reasoned that a hardship existed for the Applicant because it is an underground service from the street to the house and the wires have been cut to fit the existing panel at the current elevation. In order to raise the panel those wires would be too short and was not an easy task to replace them. He reasoned that the utilities are above the base flood elevation just not above the design elevation and offered to review the provisions of the ordinance.

Chairman Widdis asked for questions from Mr. White and Board members.

Mr. White stated for the record that the provisions are what enable the Board to grant the variance and felt it was important that be stated.

Mr. Sive described each provision and response as follows: Item A) minimal danger that the utilities would be swept away as they are attached to the dwelling; B) danger to life and property – minimum danger as they are above base flood elevation and not on the ground causing erosion; C) susceptibility of proposed facility to flood damage – minimal as they are above base flood and damage would be to the owner a lack of power; D) importance of facility to community – private dwelling that serves the individual, not the community; E) necessity to the facility of a waterfront property – the utilities are a need for the residential dwelling to provide electric and air conditioning; F) the availability of alternative locations not subject to flood and erosion – addressed that no alternate location to the existing without a burden to raise them; G) compatibility of the proposed use with existing development – the utilities discussed are typical accessory utilities and compatible to the types of utilities in the neighborhood for residential uses; H) relationship to the proposed use, flood plan and floodplain management program – his opinion that the utilities are not applicable to this standard other than they are typical utilities for residential dwelling; I) safety of access to the property in times of flood for ordinary and emergency vehicles – the location of the utilities has no impact on access to the property at any point in time, during flood or not; J) expected heights, velocity, duration rate of rise and sediment transport of floodwaters and effect of wave action – the base flood elevation for the property is 10 that would be the expected heights during the flood hazard storm – the utilities would have no impacts as they are small structures attached to the house and would not impact those items; K) cost of providing governmental services during and after flood conditions, maintenance and repair of public utilities – this is for a private residential use and wouldn't be a burden on governmental services.

Mr. White asked the remainder of the structure will be compliant with all other requirements and was told correct by Mr. Sive.

Mr. Foster asked if there was a crawl space or slab and was told a basement below main floor. Mr. White interjected that it was a crawl space while having height, is no lower than the lowest grade around it so its not considered a basement to which Mr. Sive conceded. Mr. Foster commented that he understood the electrical panel coming from the street being brought into the house, nothing very expensive, and asked the power that is already there be extended so that the air conditioning unit could be raised to be compliant. Mr. Sive responded they could look at that – it was roughly a foot and a half change to get to compliant elevation.

Mr. Kleiberg asked if the meter pan was above flood plain and was told it was above. Asked about the disconnect for the house and generator and was told they were above base flood. Mr. Kleiberg asked about the rest of the utilities below base flood – what would it do to his homeowners? Mr. Sive advised everything is above base flood elevation.

Mr. Davis asked Mr. White what was the Sandy elevation for that area. Mr. White answered in his neighborhood and old borough hall came in at 9.6-9.8.

Mr. Sive continued testimony addressing Mr. White's letter including the as-built survey shows what was built and if needed the architectural plans would be updated; driveway width of 22' at side entry and not sufficient for turning movements - industry standard is 28-32' and further reduced by the safety rail fencing. Mr. Sive acknowledged same and stated that the house was built on the foundation of the previous house; the house was switched to a side entry garage which works for the Applicant – different people use their garage in different ways – storage of lawn and garden materials and the like, some for vehicles. While 28-32' is preferred, a vehicle can get in there and he has had other properties that have 20-22'; a 6' apron shall be provided – they will comply; structural calculations for guardrail along elevated driveway to provide fall protection for vehicles also a pedestrian guide rail need where wall exceeds 30" in height – they will provide those calculations to Mr. White pending approval of the project; structural calculations required for wall segment that demonstrate designed to withstand impact load of guide rail system – certification from a licensed engineer required. Mr. Sive testified that the application proposes to remove and replace the portion of the wall that is over the property line and/or 3' in height or greater, they will design that with structural calculations in accordance with standards.

Chairman Widdis asked questions about where the wall portions will be relocated. Mr. Sive testified that the encroachment would be addressed by removing that portion and relocated onto the subject property along the property line and would be roughly 3.5-4' in height and would be redesigned with the guardrail structural calculations and would vary 3.5-4.5'. There was discussion about the wall locations, guardrail and pedestrian fencing.

Chairman Widdis asked Mr. White how do they reduce some of this wall, concerns for safety.

Mr. White recalled the variance sought for the wall as the ordinance had been changed for them to be 10' from all property lines and structures and require 5' setback for driveways so they don't use the entire front yard. The wall impacts both of those and does not meet at all but go right to the property line. Mr. White stated that he had been involved with this project since the beginning after Sandy and had met with the Applicant at the site along with the previous construction official before the work was implemented and advised him of his rights and what he needed to do in order to put in the wall. The Applicant proceeded to put them in anyway without approval. Mr. White added that several options were looked at including lowering the garage floor which would take the wall down to ½ its height, doesn't recall a garage just a bilco door on the side.

Mr. Sempkowski's webcam now visible, Mr. Toto called on him to respond to Mr. White's statements.

Mr. Sempkowski was sworn in and testified that before he put a shovel in the ground, he visited the construction office 4-5 times and confirmed that with an OPRA request of the logs that were haphazardly kept, could have been more. He spoke with Mr. Massaro on several occasions bringing diagrams and plans and explained he wanted to be consistent with the neighborhood and house across the street being on the side and was told that wasn't a problem; they issued a foundation permit to get going, they demoed the house down to the foundation and brought up on 12" block and cavities filled with rebar and concrete; received a footing inspection, foundation inspection, no concerns; goes to get a framing permit and nothing was said about the driveway or retaining wall being moved, he framed out as per plans until visited by Mr. White and Mr. Massaro where they explained he couldn't do what he was doing; he commented on the stress of the time after the storm and the hardships placed on his family including orders to vacate.

Mr. Toto asked Mr. Sempkowski whether the design was his preference and to make clear that his tone wasn't "I'm going to do what I want" but "I wasn't told". Mr. Sempkowski answered correct, instead of being told you're doing good – he should have been stopped before it was as far along as it was; he had a sheathing inspection, sheet rock installation, roof on, windows in and Mr. Massaro stopped by and was asked what's his next step and Mr. Massaro advised he wouldn't need to come back until the project was complete.

Mr. Toto asked Mr. Sive short of lowering the garage floor was there any other way from a cost perspective to mitigate. Mr. Sive responded that they were at the point the house was all done so any change would be difficult.

Chairman Widdis asked for questions from the Board members.

Mr. Dailey asked how did the mechanicals get a 1.5' below the BFE as installers know the guidelines. Mr. Sempkowski answered that it was around the time that the ordinance changed and when the electrical permit was issued he was in

compliance. He asked the electrical contractor the right place. Mr. Dailey asked then the design flood was not 12 in 2013. Mr. White responded it has been 12 since 2009 and there was a difference between building code and the Borough's flood prevention ordinance. And the Borough is part of the National Flood Program thus the additional 2.4' of freeboard. Mr. Toto asked wasn't that adoption made in 2017. Mr. White answered not the map itself – the map revised what areas were shown on which panels.

Mr. Dailey asked what was the finished floor elevation and was told 14.5, the garage slab – 9. Was any of this proposed in the original plans after destroyed by Sandy. Mr. Sive answered that the Plot Plan from 2014 shows the garage floor at 8 and finished floor at 12.4.

Mr. Kahe asked to review the elevations again – the original plot plan wasn't followed and was told the final plot plan has different elevations from the original. There was discussion about the various elevations, grades on original plan versus latest, would the retaining wall have been necessary with the original plan, no stairs from driveway to rear yard. Mr. Kahle asked what caused the change in the elevations from the original; Mr. Sempkowski testified that he had wanted the first floor at 16 and the garage higher but it ended up being 9 and not sure how it occurred.

Mr. Whitson expressed his concerns for safety and engineering problems, concern for location of the retaining wall right on the property line. He furthered that he had worked with Mr. White for more than a decade and was an excellent town engineer and the fact that he counseled the applicant what to do for the build and wasn't followed except to answer "I have no clue".

Mr. Davis stated he reviewed photographs from 2014 and it appears the driveway was in the front and was the garage in the front which Mr. Sempkowski confirmed. Mr. Davis asked if the electricity was disconnected from the house and was told yes, and new line was placed to the right side of the house (previously on the left).

Mr. Kleiberg asked if received a cut-in card before turning the power turned back on legally and urged he check with JCP&L. Mr. Sempkowski answered that he's been paying an electrical bill how could it not.

Mr. Foster commented that he found it problematic that if there was a survey that showed the garage relocation and wall before the work was done it would have indicated without question that a variance would be required for side yard and doubles that for the retaining wall. Many strange things making it difficult to know what's fair and what isn't.

Mr. Toto asked Mr. Sive if he could respond to that. Mr. Sive answered that he doesn't have the survey in front of him – it was pre-house and he was not involved with the project before the house actually went up. They prepared the plot plan and it sounds like Mr. Sempkowski obtained a foundation permit showing side-entry garage so he assumes something was submitted at that point in 2013 that allowed them to do that but he doesn't have anything.

Mr. Foster pointed out that the issue was the driveway as without it moved there would be no need for the variances.

Ms. Cooper asked for confirmation that the side-garage was on the original permit issued. Mr. White answered that he did a review in 2014 and Mr. Sive's dated April 14, 2014 for construction of new house he denied the plan because of the retaining wall and driveway setback; at that point the retaining wall was over 6' in height, subsequent submission in June 26, 2014 he reiterated the same thing.

Ms. Cooper pointedly asked Mr. Sempkowski if had the borough's permission to install the retaining wall and driveway in the location where its at. Was a permit issued for those items, those improvements? Were they on the plans? Mr. Sempkowski stated he submitted those plans. Ms. Cooper expressed concern that the driveway is narrow and doesn't meet the standard and if they're moving the wall and the driveway setback to 5' it would be further reduced. Her concern was the circumstance because plans were just moved ahead without approval?

Mr. Toto questioned Mr. Sempkowski were permits issued for the retaining wall and the driveway from the building department and he answered yes, from Mr. Massaro.

Mr. Toto continued that it was obvious things need to be reworked or looked at further with the professionals and Mr. White and that they could take some time to gather the COs and documents but was open to further comments if the Board felt necessary.

Chairman Widdis asked Ms. Cooper if she had any further questions/comments and was told none of her questions had been answered properly so she would wait for the documentation. She would also like to see what they are going to do with the driveway and retaining wall and while the comment that the neighbor was ok with it, they may not always be the neighbor.

Chairman Widdis commented that there's a safety issue with the driveway and if they were going to move the wall it would reduce further the turn around and then the issues with the mechanicals seem rather haphazard and concern for safety issues for not just the Applicant but future homeowners.

Mr. Whitson asked Mr. Kennedy if the wall was partially on the neighbor's property – does the Board have the legal right to permit a retaining wall not on the subject property and was told the Board has no authority to grant approval to build on somebody else's property, but to be clear, the applicant was proposing to relocate onto the subject property.

Mr. Toto asked Mr. Sive to comment on the U-shaped driveway. Mr. Sive testified that it was being proposed to help with vehicles backing down to pull forward through the loop and not back out onto Cayuga because of the reduced turn-around area. That was traffic movements stay on the property and provides additional parking off the street which impacted the impervious coverage as Oceanport considers gravel driveways impervious.

Mr. Toto then requested that the Board carry the application without additional notice. Mr. Kennedy commented that he was comfortable not requiring new notice because it would be carried to a date-certain. Mr. Toto consented to an extension of the timeframe for a decision.

PUBLIC:

Chairman Widdis opened the meeting to questions from the public. Ms. Smith provided the details for participation. As there was no one from the public, Chairman Widdis closed that portion of the meeting.

Motion to Carry Application to April 13, 2021 with no additional notice required.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John (Jack) Kahle, Class IV
SECONDER:	James Whitson, Vice Chairman
AYES:	Widdis, Whitson, Cooper, Foster, Kahle, Kleiberg, Davis, Dailey
ABSENT:	Tvrdik, Savarese

2. PB2020-07 Ft Monmouth Business Center (FMBC)

Fort Monmouth Allison Hall Parcel
Block 110, P/O Lot 1
Signal and Oceanport Aves
Preliminary and Final Site Plan

Due to a notice issue, the Applicant will be rescheduled for a Special Meeting on March 16, 2021 subject to payment of the Special Meeting fee and proper service of notice to the public.

IX. Petitions from the Public: Chairman Widdis opened the meeting to Petitions from the Public. As no one from the public presented, Chairman Widdis closed that portion of the meeting.

X. Adjournment: As there was no further business, the meeting was adjourned at 9:11 pm on a motion by Mr. Kleiberg which was seconded by Mr. Kahle and approved by the Board.

Respectfully submitted,

Jeanne Smith
Board Secretary