OCEANPORT PLANNING BOARD
MINUTES
February 13, 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. Kahle, Ms. Halpern, Mr. Savarese, Mr. Tvrdik, Mr. O'Brien, Mr. Whitson

MEMBERS ABSENT: Mr. Kleiberg, 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 January 9, 2018 were approved as presented on a motion from Mr. Foster and a second from Mr. Savarese and approved by the eligible Board members.

OLD BUSINESS:

1. PB2017-10 Ward, Edward and Tara
   19 Oneida Ave.
   Block 31, Lot 9
   Request for variances for construction of pool and deck

A-1 Colored Sheet T-1 prepared by MSA Associates, dated August 4, 2017, last revised December 29, 2017
A-2 Drainage Plan, 19 Oneida Ave, prepared by East Point Engineering, LLC, dated December 29, 2017.
A-3 Drainage Plan, 19 Oneida Ave, prepared by East Point Engineering, LLC, dated December 29, 2017, last revised February 13, 2018.

Board members Halpern and Savarese recused themselves from the application due to potential conflicts.

The following persons were sworn in: William White, Board Engineer/Planner; Edward and Tara Ward, Applicant/Owners. Mr. Ward provided a brief history of the application. He discussed the impervious coverage, fence and removal of the wall. The height of the deck was reduced. The couple wishes to create a safe place for their children to play. Mr. White stated the request is for a rear yard setback for the deck, proposed 10' where 25' is required. There was discussion regarding purchasing adjacent property to eliminate the need for the variance, which was not available. The deck will not impede neighbors' views.

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

John Hickey, 12 Ticonderoga Ave, introduced himself to the Applicants, was sworn in and asked questions related to drainage. Mr. DeNoia suggested holding those types of questions for the Applicant's Engineer.

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

Vlad Kaushansky, Architect for the Applicant, was sworn in, presented his qualifications and experience appearing before other Boards and was accepted by the Board as an expert in architecture.

Mr. Kaushansky provided testimony concerning plans submitted by the Board, including impervious coverage, described the 2-level deck and explained the plans comply with all requirements with the exception of the rear yard setback. He introduced and described **Exhibit A-1**.

Vice Chairman Whitson asked for questions from the Board. Mr. Kahle asked what the impervious coverage of the deck was. Mr. Kaushansky advised the revised coverage of 36 is below the maximum of 40. Mr. Kahle asked questions regarding the height of the deck and fence. Mr. White advised that you would be able to see above the fence from the deck.

PUBLIC:
Vice Chairman Whitson opened the meeting to the public for questions for this witness only. As there was no one from the public who appeared to be heard, Vice Chairman Whitson closed that portion of the hearing.

Marc S. Leber, Engineer and Planner for the Applicant, was sworn in, presented his qualifications and having been previously before the Board was accepted as an expert in the fields of engineering and planning.

Mr. Leber introduced, described and referring to **Exhibit A-2** provided testimony concerning the site, described the site characteristics, surrounding neighbors, site drainage and existing swale and berm. To address Mr. White's January 15th letter, the berm has been eliminated. The revised plan lowers the pool to the existing grade, which will add 2 steps, but will maintain the water pattern. Mr. Leber introduced and described **A-3**. The plans show the removal of the retaining wall and revising the planter to grade level.

Mr. Tvrdik asked questions regarding elevation and runoff. Mr. Leber replied that there was no way to tie the run off into a catch basin. The swale will be more pronounced to address the runoff. Mr. White asked about the 6.5 height on the south side, which is higher than the pool, and suggested the pool be raised about ½ foot to improve grading. Vice Chairman Whitson asked how the drainage would affect neighbors. Mr. Leber replied there would be no perceptible difference since the neighbors are higher. Mr. White agreed it would be a de minimum increase.

PUBLIC:
Vice Chairman Whitson opened the meeting to the public for questions for this witness only. As there was no one from the public who appeared to be heard, Vice Chairman Whitson closed that portion of the hearing.

Vice Chairman asked Mr. Leber to address the Application as an expert in Planning. Mr. Leber testified that the shape of the lot is challenging and there aren't any detrimental impacts. Mr. Leber testified the Applicant adheres to lot coverage restrictions and is aesthetically pleasing.

Vice Chairman Whitson opened the meeting to the public for statements on the application. As there was no one from the public who appeared to be heard, Vice Chairman Whitson closed that portion of the hearing.

John Hickey, 12 Ticonderoga Ave., appeared and described how the swale between the properties has degraded. His backyard floods significantly more than prior to the building of this home. He expressed concern that bushes and mulch were not planned. Mr. White stated that maintaining existing grade is key. Mr. Leber stated the Board could add a condition to ensure that the swale is not interrupted. Mr. Foster noted that over time, swales have been filled in and causing problems. He asked Mr. White what the Borough's liability would be if a swale was filled in. Mr. White replied that if a swale was filled in and impacted a neighbor, that would be a civil lawsuit between the neighbors. Mr. White noted that if approved and after resolution compliance, the Applicant would be required to submit a grading plan and final as builts would be reviewed. Mr. White suggested language to restrict changing the existing grade be included in the resolution.

Vice Chairman Whitson noted that the purpose of the Municipal Land Use Law would be advanced in the Application and the benefits of the deviations substantially outweigh the detriments.

Mr. Kahle made a motion to approve the application based on the new engineering plans presented, with a lower fire pit area, pool, revised grading plan, removal of the dry wells, consideration for the rear drainage, for relief for Rear Yard Setback of 10' where 25' is required which was seconded by Mr. Foster. Mr. Foster stated his support was based on positive and negative criteria being addressed satisfactorily. His concern about runoff was also addressed and the Applicant will take precautions to reduce negative impact to neighbors. The motion received the following roll call:

AYES:	Mr. Sullivan, Mr. Foster, Councilman Proto, Mr. Kahle, Mr. Tvrdik, Mr. O'Brien and Mr. Whitson
NAYES:	None
ABSTAIN:	None
ABSENT:	Mr. Savarese, Ms. Halpern, Mr. Kleiberg, Mr. Widdis

Ms. Smith stated the motion carried.

Mr. Savarese re-entered the meeting at 8:25pm and resumed his position on the dais. Ms. Halpern recused herself due to potential conflicts.

NEW BUSINESS:

2. PB2017-19 Gallo, Joseph
   523 Port Au Peck Avenue
   Block 31, Lot 10
   Request for Bulk Variances and Impervious Coverage

Joseph Gallo, Applicant/Owner, was sworn in. Mr. DeNoia explained the requirements the Applicant has to meet in order for the Board to approve the Application. Mr. Gallo explained his reasons for the request for variances for fencing, rear and side yard setbacks for a pool and exceeding impervious coverage limits. Vice Chairman Whitson summarized: front yard setback 25' required, 10' proposed; shed 25' required, 5' proposed; impervious coverage 37% permitted, 42.3% proposed; maximum fence height 4', less than 50% solid, 6' solid proposed. There was discussion regarding the front yard setback, due to the dual frontage of the property.

Mr. White asked if the shed could be moved to the rear corner of the yard instead of the front yard, which would eliminate a variance. Mr. White stated to be in compliance, the shed would have to be 10' off the side yard and 5' off the rear. Mr. Gallo stated he will relocate the shed within those setbacks. Mr. White asked if the pool could be shifted slightly to the north. Mr. Gallo replied that the location of the pool was primarily so it could be viewed from the deck. Mr. O'Brien asked if the height of the fence would be 6', which Mr. Gallo replied that it would be. Councilman Proto asked about the 30' frontage on Port Au Peck and 15' on Oneida. Mr. White stated that because of the location of the building, the front yard is from the face of the building. Councilman Proto suggested rotating the pool, to mitigate the front setback variance. Mr. White stated that might help alleviate his concerns about the side yard grading. Mr. Foster asked about the height of the fence and drainage. Mr. Gallo stated that the runoff is to the Oneida side, and there is an operating swale in that area. There was discussion regarding grading at the putting green. Mr. White stated his concern was drainage to the property to the east. Mr. White asked what the 489 sq. ft. deck would be made of. Mr. Gallo replied that it was Azek. The deck should not be included in the impervious coverage calculation, which would reduce the overage. Mr. Gallo stated he could forego the 144 sq. ft. shed. Mr. Tvrdik suggested moving the fence away from the street. Mr. Savarese agreed that shifting the location of the pool, relocating or removing the shed and moving the 6' fence to the north.

Vice Chairman Whitson summarized the application, which has been reduced from 4 to 3 variances, and stated with some further revision, the impervious coverage variance could be reduced. He suggested the Board needs a new set of plans to reflect the changes discussed. Mr. Gallo stated he would like to come back with new plans based on the statements of the Board. Vice Chairman Whitson also requested that drainage be addressed for the neighbors.

Ms. Smith advised the earliest available date would be March 13, 2018, and she would need the revised plans by March 2nd otherwise the Applicant would have to re-notice. Vice Chairman Whitson advised the public that the application was being carried to the March 13, 2018 meeting with no additional notice required.

Ms. Halpern re-entered the meeting at 8:53 pm and resumed her seat on the dais.

RESOLUTIONS:

3. PR-18-06 Brown, Peter – 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. Savarese, Ms. Halpern, Mr. Kahle, Mr. Tvrdik, Mr. O'Brien and Mr. Whitson
NAYES:	None
ABSTAIN:	None
ABSENT:	Mr. Kleiberg, Mr. Widdis
INELIGIBLE:	None

   Ms. Smith stated the motion carried.

4. PR-18-05 Fiore, Joseph – As the resolution was provided previously to the Board, Mr. DeNoia summarized the Resolution after which Mr. Kahle made a motion to approve the resolution which was seconded by Mr. Sullivan and received the following roll call:

AYES:	Mr. Sullivan, Ms. Halpern, Mr. Kahle, Mr. Whitson
NAYES:	None
ABSTAIN:	None
ABSENT:	Mr. Kleiberg, Mr. Widdis
INELIGIBLE:	Mr. Foster, Councilman Proto, Mr. Savarese, Mr. Tvrdik, Mr. O'Brien

   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.

EXECUTIVE SESSION: Whereas**,** the Open Public Meetings Act provides that the Planning Board may go into executive session to discuss matters that may be confidential or listed pursuant to N.J.S.A. 10:4-12(b)(7) and the Board Attorney has recommended that the Planning Board go into executive session to discuss the Sopenoff/Moeller Litigation which matter is permissible for discussion in executive session, therefore,

At 8:59 pm, the Board entered executive session on a motion by Councilman Proto, second by Mr. Kahle and unanimously approved by the Board.

At 9:16 p.m., the Board returned from Executive Session and the regular meeting was reopened on a motion by Mr. Kahle and seconded by Mr. Foster and approved by the Board.

ADJOURNMENT: As there was no further business, the meeting was adjourned at 9:16 p.m. on a motion by Ms. Halpern which was seconded by Councilman Proto and approved by the Board.

Respectfully submitted,

JEANNE SMITH
Secretary