

BOROUGH OF TUCKERTON LAND USE BOARD

January 17, 2019

In accordance with the provisions of the Open Public Meetings Act, Mayor Marshall, opened the meeting of the Tuckerton Land Use Board on Thursday, January 17, 2019, at 7:00 p.m. in the Tuckerton Borough Hall.

FLAG SALUTE: Mayor Marshall led the flag salute.

SUNSHINE STATEMENT: Carol Scurman read the provisions of the Open Public Meetings Act.

Mr. Shinn informed the Board all members have been sworn in.

REORGANIZATION:

A motion was made by Keith Vreeland and seconded by James McAndrew to nominate Calvin Morey as Chairman of the Land Use Board. Nominations were closed. All were in favor with the exception of Calvin Morey who abstained; the motion was carried.

A motion was made by James McAndrew and seconded by Keith Vreeland to nominate Joan Rosenberg as Vice-Chairman of the Land Use Board. Nominations were closed. All were in favor with the exception of Joan Rosenberg who abstained; the motion was carried.

A motion was made by Keith Vreeland and seconded by James McAndrew to retain the services of Carol Scurman as Recording Secretary. Nominations were closed. All were in favor; the motion was carried.

A motion was made by Mayor Marshall and seconded by James McAndrew to nominate Keith Vreeland as Corresponding Secretary of the Land Use Board. Nominations were closed. All were in favor with the exception of Keith Vreeland who abstained; the motion was carried.

A motion was made by Keith Vreeland and seconded by Mayor Marshall that the meeting time and date would remain at 7:00 pm on the third Thursday of each month with the exception of November; that meeting will be held on the second Thursday. All were in favor; the motion was carried.

A motion was made by Keith Vreeland and seconded by James McAndrew to retain the services of Mark Rohmeyer of the engineering firm of T & M Associates, as the Land Use Board Engineer. Nominations were closed. All were in favor; the motion was carried.

A motion was made by Keith Vreeland and seconded by Jim McAndrew to retain the services of Jason Worth of the engineering firm of T & M Associates, as the Land Use Board Planner. Nominations were closed. All were in favor; the motion was carried.

A motion was made by Keith Vreeland and seconded by James McAndrew to retain the services of Robert Shinn of the law firm of Woodland, McCoy and Shinn, to represent the Land Use Board. Nominations were closed. All were in favor; the motion was carried.

ROLL CALL:

The members of the Land Use Board in attendance were Mayor Susan Marshall, James McAndrew, Keith Vreeland, Joan Rosenberg, Tom Hennaut, Peter Gioiello, Don Rocheskey, Wayne Tonnesen, and Calvin Morey.

Greg Brojack and Robert Rue were absent.

MINUTES:

A motion was made by Tom Hennaut to accept the minutes of the December 20, 2018 meeting as written. Joan Rosenberg seconded the motion. On roll call, all voted yes with the exception of Keith Vreeland and Don Rocheskey, who abstained. The motion was carried.

INVOICES

Woodland, McCoy & Shinn totaling \$1,575.00

1/10/19 64886	Jon Miller Properties	50.00
1/10/19 64887	General Board Representation - December, 2018	325.00
1/10/19 64888	H2 Investments (Sheltered Cove) B 40, Lot 1 & 2	1,000.00
1/10/19 64890	Piatek B 40, L 3 / Bulk Variance	200.00

A motion was made by Jim McAndrew and seconded by Tom Hennaut to approve the payment of bills on the availability of funds. On roll call vote, all members agreed. The motion was carried.

CORRESPONDENCE

1/7/19 from Kim Dixon Environmental Consultant LLC, re: Application for a Waterfront Development Permit & Tidelands License, Block 35, Lot 4

NEW BUSINESS

**WIESLAN AND MALGORZATA PIATEK / BULK VARIANCE
BLOCK 40, LOT 3 / 3 CARROLL AVENUE**

Ray Bartlett, 11 White Oak Lane, Little Egg Harbor and the applicant, Malgorzata Piatek, 3 Carroll Avenue, were sworn in by Robert Shinn. Mr. Bartlett advised the board he was helping Mr. & Mrs. Piatek with their variance application. Their home was built two inches over the front and side setback by a builder who is no longer in business.

Mark Rohmeyer was sworn in and summarized the application. The property is located on the west side of Carroll Avenue, in the R-50 Residential Zone, with 50 feet of frontage on Carroll Ave. No construction improvements are proposed at this time. They are requesting variance approval for front and side back distances. The following variances are required for this application: Front yard setback variance-19.8 feet is provided where 20 feet is required and a side yard setback variance-4.8 feet is provided where 5 feet is required. Mr. Rohmeyer also noted the AC unit is on an elevated deck and provides a 1.3 foot side yard setback. Since the ordinance does not address AC units and generators in the side yard, it needs to be decided if this encroachment is permitted or needs an additional variance. No waivers are associated with this application; curb and sidewalk requirement is not required for single family dwellings.

Mrs. Piatek addressed the board. When they bought the undeveloped land four years ago they hired a contractor to build the house who unfortunately took advantage of their trust and constructed the house in the wrong location. Mr. Rohmeyer asked the applicant if she thought its present location would be a major detriment or harm to the town. She replied it would not.

The following exhibits were entered into evidence:

- A-1 Application dated 9/2/18
- A-2 Plan of Survey, Block 40, Lot 3, prepared by Jay F. Pierson (7/23/18), Nelke, Constantine & Assoc., Inc., Engineering Services, dated 7/13/18, 1 sheet
- A-3 Engineer review letter, dated 12/13/18, prepared by Mark Rohmeyer, P.E, Land Use Bd. Engineer
- A-4 Notices

Mr. Shinn said, looking at the survey, the house was constructed by the contractor in the wrong location. His error was not discovered until the house was built. The applicant is requesting a C-2 Variance. The board needs to take into consideration not only the hardship to the applicant, but also determine if it can be granted without causing a substantial detriment to the community or to the zoning ordinance plan. Mr. Vreeland asked if the C-2 Variance requirement also covered AC units. Mr. Shinn said normally they are not included.

Mr. McAndrew said elevated AC units and generators would not be considered in the setbacks. The distance involved is so minimal, he sees nothing preventing this applicant from going forward. Mr. Vreeland agreed.

Public portion was opened. There being no comments, public portion was closed.

A motion was made by Peter Gioiello and seconded by Keith Vreeland to approve the variance. On roll call vote all members said yes. The motion was carried.

**H2 INVESTMENTS - BLOCK 40, LOTS 1 & 2
REQUEST TO CHANGE FENCE SCREENING CONDITION OF APPROVAL**

Howard Butensky addressed the board. He advised the applicant's engineer, Doug Rohmeyer from C & M Associates would be testifying. The Applicant, Mark Hartman was also in attendance. Mr. Rohmeyer was sworn in and accepted as an expert in his field.

The following exhibits were entered into evidence:

- A Correspondence from CME Associates, dated 11/26/18
- B Survey of Property, prepared by CME Associates, dated 10/22/18
- C Correspondence from T & M Associates dated 10/15/18
- D Correspondence from T & M Associates dated 12/11/18
- E Notices

Mr. Shinn addressed the Board. The Board voted to have a privacy screen the entire length of the South Green Street property; however, there is an ordinance in the fencing section that allows a 4 foot privacy fence in the front yard. In lieu of constructing a four-foot-high fence, Mr. Butensky is recommending we change that to the same type of fence presently existing (8-foot high fence) that would extend to the new structure. Mr. Shinn explained this is a legal issue as well as an engineering issue.

Mark Rohmeyer, Land Use Board Engineer, clarified it's an existing chain-link fence along the South Green Street property frontage. During the original application, the applicant offered to provide screening slats in the existing fence in front of the proposed structures to soften the esthetic look of the structures. It was later decided to extend the screening across the entire frontage of the street. The board needs to decide to keep the screening along the entire frontage or cut it back to just in front of the new structure. The options would be to keep the slats more open (every other slat) or only half the height of the fence. Mr. Rohmeyer recommended cutting back the screening in front of the proposed structures.

Doug Rohmeyer, the applicant's engineer, addressed the board with the concerns of the applicant. We are here to propose adding 60 feet of screening in front of the relocated membrane structure on the existing 8 foot fence. There is screening in the form of slats currently adjacent to the existing principle; the other principle structure in a southerly direction.

Exhibit F was entered into evidence. It depicted the existing structure central on the lot along South Green Street frontage. The proposed steel structure is going in the location where the tent was previously located. That area is currently covered by an 8-foot chain-link fence and substantially screened with slats. The tent structure has been relocated. They are proposing to limit the additional screening to be located immediately adjacent with that form of screen that would be attached to the existing fence.

Doug Rohmeyer reviewed his letter dated November 26, 2018 (Exhibit A) and gave an update. CAFRA and the Ocean County Planning Board have approved the application. As per his letter, he identified reasons in support of the reduced screening from the entire frontage to just in front of the proposed improvements:

- 1) Increase site visibility-full screening could propose a potential issue with emergency services.
- 2) Reduce the likelihood of theft and vandalism.
- 3) The ability for the business to showcase their inventory.
- 4) Promote internal circulation on the site, specific to the existing driveway on the north end of the property.

Ordinance 210-10-C1 which has been addressed by the professionals.

Mr. Shinn said the fencing ordinance (210-10-c-1) is not in conflict with what we did except for the height, which is 4 feet high along a roadway, with a break allowing air to go through. The board's options are:

- 1) Allow to remain what was approved in the Resolution, which would be problematic.
- 2) Request the whole length of the fencing along South Green Street to be 4 feet tall with 50% screening
- 3) Grant the variance they are requesting to extend this to 60 feet, 8 feet tall, consistent with what's already there with regard to the new structure and the tent relocation.

Mr. Butensky advised the existing fence pre-exists the Fence Ordinance. They are asking for 8-foot screening in front of the new building and the relocated tent, but not along the north and south sides.

Mr. McAndrew said since the existing 8-foot fence is grandfathered in, we are looking at how we are going to esthetically block the area with fencing. He believes requiring slats the entire length of the business would look unsightly.

Mr. Tonnesen said he thought the public had requested full screening; Mr. Gioiello and Mr. Vreeland agreed. Mr. Shinn said the public will have an opportunity to express their opinions during public portion.

Doug Rohmeyer added that in discussion with the owner, in lieu of slats, he'd like to use a fabric material, similar to screening used at tennis courts or baseball fields. Mr. Tonnesen asked if the fabric would satisfy the 50% opening. He was told it could be. Mr. Vreeland asked if the fabric would also replace the existing slats to create consistency. Mr. Rohmeyer said no modifications are proposed to the existing screening. There is a driveway in between to separate the two different fence screenings.

Mr. Morey opened public portion. He advised comment had to be limited to the fencing and screening, with a 5 minutes limit.

Rita Menzen, 923 S. Green Street was sworn in. Regarding esthetics, Ms. Menzen shared the finished view she sees. No matter what size fence or screening is approved, her view will not change.

John Zubriski, 707 S. Green Street was sworn in. He questioned how the applicant can change the screening from slats to fabric. He questioned if there would be more boats displayed.

Gary Corriero, 925 S. Green Street was sworn in. The esthetics are already ruined; the size of the fence is not going to change that. They should not be able to come in after the fact and change the plan. He believes the reasons stated are invalid and asked if the reason for change is expense, or just poor planning. None of us wants the marina to do poorly, but he should come up with a 5-year plan and not keep changing the plan. It not only looks bad for the neighbors, but also for the town. He would personally hope the board sticks to the original plan.

Bruce Menzen, 923 S. Green Street was sworn in. He said the fence was torn out and replaced after Sandy.

There being no further comments, Public Portion was closed.

Mr. Butensky's comments to Public Portion included:

The fence was destroyed by Sandy and was replaced properly by permit.

The applicant never agreed to the privacy fence the entire length of South Green Street. What had been agreed to is what they are asking now, which is adding privacy to that portion of new construction on the site. The Board, as a condition, added the entire site.

The reasons stated for the change are valid and sound engineering-based comments. However, the most important thing is, the Fence Ordinance does not permit what was in that condition, so the applicant respectfully asks that it be alleviated to the extent of what was originally discussed at the prior hearing.

Mr. Shinn said we have a resolution with an 8-foot privacy fence condition that contradicts what is in the Fence Ordinance. We were using Ordinance 220 regarding buffer fencing and esthetics for site plans; however, the Fence Ordinance says 4 feet on the roadway with 50% screening. To conform with the ordinance, we need to change the resolution to say the entire length, 4 feet high, with 50% air and light. The alternatives are, grant a variance to allow the applicant an 8-foot fence with privacy slats, but not the whole length of the property, or permit the 4-foot privacy fence along the whole property and the 60 feet of 8-foot fencing behind the new structure.

Mr. Tonnesen asked Mr. McAndrew how they were permitted to put up another 8-foot fence. Mr. McAndrew said, without the records in front of him, he cannot answer that question; he would be glad to provide those records to the board upon availability. However, if the fence was knocked down as a result of Sandy, a permit was not required to replace it.

Mr. Shinn asked Mark Rohmyer to read the Fence Ordinance (Section 210-10-c-1)-Height restrictions-open fencing-into the record.

Mr. Tonnesen asked if permits were issued for an 8-foot fence, could we presume the screening would also be allowed to be 8 foot? Mr. Shinn said a variance could be issued for screening the whole length; however, he doesn't think that would be appropriate.

Mr. Butensky said we are talking about conditions. He said there is case law where the judge ruled for a condition to be valid:

- It must not offend any provision of the zoning ordinance.

- It must not require illegal conduct on the part of the permittee.

- It must be in the public interest.

- It must be reasonably calculated to achieve some legitimate objective of the Zoning Ordinance.

- It must not be necessarily burdensome to the landowner.

This condition clearly offends a provision of the zoning ordinance.

Mr. Vreeland said, to clarify, tonight's discussion is about privacy screening. The question is, do we grant 60 feet at 8 foot high privacy screen and/or the entire length at 4 feet with 50% open.

Doug Rohmeyer responded he doesn't believe a 4-foot high screen would accomplish the goals of the public to screen the site. Mr. Gioiello said he believes fabric screening will not hold up and strongly recommends slats. Several board members agreed with him.

Mr. Butensky said the applicant is prepared to add to the 8 feet with a 50/50 nature if the board is inclined to opt out for the 60 feet at 8 feet high, which would require a variance.

Mr. Hennaut said it is very difficult to visualize what is being discussed. A rendering would be most helpful. Doug Rohmeyer said what they are proposing is to modify the condition from the entire length to just put screening for 60 feet of the fence in front of the tent. Mr. Morey asked if the screening would be consistent with the existing screening. Mr. Rohmeyer said there are slats there now. To keep it consistent, the existing slats will be removed so all the screening will be fabric material.

Discussion followed regarding the square footage of fencing and fencing options. Mr. Morey asked if he was right in assuming the 4-foot fence would not cover the concrete base of the tent. He was told that is correct. Mr. Tonnesen added it would, however, cover trailers and other things laying on the ground.

Mr. Butensky asked for a short recess to confer with his client.

Mr. Butensky said the applicant's preference would be to have a 50% fence to replace the present slatted fence and cover the new construction area 60 x 8 feet with the material being consistent. The alternative would be a 4-foot

fence, however, they question what that would accomplish in terms of screening anything. Doug Rohmeyer described the fabric as something you would see at a municipal park, riveted and connected at multiple points to the fence. They would select specified materials subject to the board's review and approval that it would have 50% openness. On the 4-foot fence, fabric would have to be raised to allow for water flow. Mayor Marshall asked how this fits into the Borough Ordinance. Mark Rohmeyer recapped what we are trying to accomplish with the fencing. Originally he believes the intent was to offset the face of the new structure. If we are now trying to block some of the view of the marina, that would be accomplished by doing the full frontage. Mr. Vreeland said, from an esthetic standpoint for the residents to create a horizontal effect, a 4-foot high fence makes more sense. Mr. Morey asked if the slats would need to begin one foot from ground level for water drainage. Mr. Vreeland said if it's 50% open, that would allow water to flow.

Doug Rohmeyer said esthetically, it comes to individual taste. The applicant is requesting to modify the full length to just in front of the building, which would still address the concerns of the public to try to screen the improvements. He doesn't see what a 50% ribbon across the full frontage accomplishes. Regarding the improvements, the building is conforming in height and location, with no variances required.

Mr. McAndrew said we also have to consider the security and liability of that property. A 4-foot fence offers no security, rather an invitation to vandalism. Mr. Butensky agrees his client has security issues. Mr. Vreeland agreed the 50% screening would allow a patrol car to see into the property, but for an esthetic point, it adds more cohesiveness to the property.

Mr. Vreeland said, considering the difficulty in visualizing the two options of screening, he respectfully requested a rendering which would help the board make a decision; it would also be to the advantage of the applicant. Mrs. Rosenberg said she personally felt this is too ambiguous to make a decision. The board members agreed. Mr. Morey asked if the board could request a rendering. Mr. Shinn said the board could request the applicant carry this to next month, and come back with two renderings. We will waive any timeframe for decision. The ordinance doesn't specify type of screening so the board can specify slats, however, the applicant can challenge it.:

- 1) With the section 8-feet high and not have the privacy screen the rest of the length.
- 2) A 4-foot high fence the entire length.

Doug Rohmeyer said coming back with renderings would be cost and time prohibited. Mr. Butensky advised his client would like to get this resolved tonight. .

Wayne Tonnesen made a motion to approve a 4-foot fence, 50% open, as per ordinance, the entire length of the property.

Mr. Butensky said he's not sure slats can be done for a 4-foot fence. Doug Rohmeyer added there is no guidance in our code as to what materials can be used. The property owner doesn't want to do slats every other space; that is not the look the property owner is looking for on his private property. The building conforms and he's willing to provide the 8-foot buffer in front of the building; a 4-foot fence is not going to accomplish it and it's not the look that he wants for the site.

Mr. Butensky submitted two pictures of the site showing the existing screening devise, marked as Exhibits G and H. Doug Rohmeyer said, in lieu of a rendering, he has photos taken by himself approximately one year ago showing how the fence presently looks. It shows the 8-foot fence with 8 feet of slats. They propose to modify that screening, remove every other slat. For consistency, they will implement the same treatment of slats in front of the new proposed tent structure for the 60 feet.

Public Portion was reopened.

Gary Corriero said the public attending is in agreement with this plan.

Public Portion was closed.

Mr. Hennaut asked if a variance would be needed to approve 60 feet of 50% screening behind the newly relocated tent, in addition to what's on site already. Mr. Butensky added, to the extent that would be a violation, making that a motion would grant that variance. Doug Rohmeyer said the existing slats come to about 12 feet from the site of the proposed metal building. Coming from Rt 9, the existing slats are about 12 feet short of the proposed steel building. That is where they plan to move the driveway. They will then add 60 feet in front of the newly located buildings.

Mark Rohmeyer said on the latest revision of the 10/22/18 Site Plan, the existing screening is 85 feet, extending from the existing one-story structure south, to the entrance way which will remain. The entrance way is approximately 27 feet. The proposed fence screening is shown at 99 feet, but it is shown in front of driveway. Mr. Vreeland said the gate is being relocated so the screening could conceivably be put in the gate, resulting in one continuous strip totaling 184 feet.

Doug Rohmeyer said Exhibit H shows approximately 60 feet of existing slats along the frontage. They are proposing to take out half of those slats and put them 60 feet in front of the relocated tent. That leaves a small gap at the driveway gate location. Allowing an opening required for site distance, slats are not permitted right up to the gate. Mr. Vreeland said the plans disagree. They say 85 feet is existing and proposed is 99 feet. Mr. Rohmeyer said he was respectfully amending that.

Mr. Butensky recapped that they plan to remove half of the slats from 60 feet of fencing and relocate them in front of the relocated tent. Mr. Morey said that would leave 10 feet open on either side of the gate. Doug Rohmeyer said on his October exhibit, an additional 99 feet is proposed, which is 30 feet more than we are now talking about. That's the two-way access and 30 feet; the 18 foot driveway and what's left after that. Eight feet on either side of the driveway will not have slats. Mr. Vreeland said, for the public's edification, both buildings will not be totally screened. Doug Rohmeyer confirmed 27 feet of the building will not be blocked by the 50% screening.

Doug Rohmeyer said the applicant recognizes that the 60 feet of existing slats that fronts on S. Green Street will not cover the entire building. They would like to keep that section and move 60 feet over to the new tent structure. Hearing comments and concerns regarding the 27 feet of building remaining unscreened, they would be able to extend the 50% screening to a point that it wouldn't conflict with the site triangle. They agree to bring it as close to the drive as is safe. Mr. Vreeland asked the angle of the site triangle. Doug Rohmeyer said it's a formula based on the posted speed limit; and estimated the result would be 5 or 10 feet short instead of 27 feet.

Mark Rohmeyer summarized, slats would be added to the existing 8-foot fence, 50% open, along the entire frontage of both proposed buildings, less the site triangle.

Tom Hennaut made a motion to approve the plan summarized by Mark Rohmeyer. Peter Gioiello seconded the motion. On roll call vote:

Mayor Marshall voted yes
James McAndrew voted yes
Keith Vreeland voted yes

Joan Rosenberg voted yes
Tom Hennaut voted yes
Greg Brojack voted yes

Don Rocheskey voted yes
Wayne Tonnesen abstained
Calvin Morey voted yes

Motion was carried.

END OF THE YEAR REPORT

Mr. Shinn said, the Year End Report refers to issues that came up during the year that this board would like the legislative body to address.

Keith Vreeland suggested a native planting ordinance for new construction as well as existing construction. Mr. Rohmeyer said he is familiar with similar ordinances in neighboring municipalities; he will pull some for the next meeting, Mayor Marshall added the Environmental Commission also had resources regarding this.

Mr. Shinn said he and Mr. Rohmeyer have been discussing eliminating the unfortunate situation regarding the first applicant who required a variance upon realizing her completed home was not constructed within permitted setbacks. It was suggested requiring a foundation or piling plan survey before the work is first started.

It was noted there is no height restriction in the B-3 Zone. It was suggested that be addressed.

Calvin Morey asked if we can avoid court costs, and defer them to the applicant, when an applicant repeatedly appeals our decisions. Mr. Shinn said that is covered by state statute; however, he would put it in the resolution that we would like to explore that possibility.

Mr. Shinn summarized the following would be included in an End of the Year Report Resolution:

- Invasive Species Ordinance
- Height limitation requirement in the B-3 Zone
- Foundation/piling plan survey requirement prior to building.
- Explore the possibility of fee shifting for reoccurring appeals by applicants.

A motion was made by James McAndrew and seconded by Keith Vreeland for a resolution addressing these issues. On roll call vote, all members voted yes. The motion was carried.

INFORMAL DISSUSCUSSION

Mayor Marshall welcomed Don Rocheskey to the board and thanked everyone else who agreed to be reinstated.

Tom Hennaut said in the summer time, the parking spaces reserved for the fire company are often taken by Dunkin' Donuts clientele. Mr. McAndrew said that was already discussed and decided at a Council meeting.

Mr. Vreeland said, by ordinance, the Historic Preservation Landmarks Commission is to have a liaison to this board. We can make that determination at our next meeting. Their new chairperson is Keegan Vreeland. He has some new ideas in keeping with what this board is looking for. With the CLG certification, their next step is to move forward in getting grants.

Mr. McAndrew said he had an opportunity to speak to Mark Rohmeyer about the comments of one of the residents in attendance during H2 Investment's hearing. She mentioned when there is high winds they hear a flapping noise made by the tent at the base of the rear along the concrete structure because of excess material. Mark Rohmeyer is already in the process of correcting that situation.

Carol Scurman read a card from Mayer Marshall and the Tuckerton Borough Council, thanking the board and its professionals for serving on The Land Use Board and for their interest in helping our town. Happy New Year.

ADJOURN

There being no further business, a motion was made by Jim McAndrew, seconded by Joan Rosenberg and unanimously agreed to adjourn the meeting.

Respectfully submitted,

Carol Scurman
Land Use Board Secretary