

**MINUTES OF THE REGULAR SESSION
STONE HARBOR PLANNING BOARD**

January 25, 2021

4:30 p.m.

CALL TO ORDER:

The meeting was called to order by Vice-Chairman Conrad, who stated that all requirements of the "Open Public Meetings Act of 1975" had been met with the Press of Atlantic City having been notified of the Board's schedule for 2021 on December 12, 2020 and the schedule having been posted on Stone Harbor's website and the Municipal Clerk's Bulletin Board.

Roll Call

Members Present:

Mayor Judy Davies-Dunhour
Thomas Hand, Chairman-via Zoom
Wayne Conrad, Vice-Chair
Robert D. Bickford, Jr.
Lynne Dubler-via Zoom
Charles C. Krafczek-recused
Administrator Robert Smith
Kevin Fischer (Alternate II)
Sandy Slabik (Alternate I)- Zoom

Solicitor:

Paul J. Baldini

Board Secretary:

Kate McGonagle

Zoning Officer

Ray Poudrier-Recused

Engineers/Planners

Kates Schneider
Engineering, LLC-Recused

Approval of January 11, 2021 Meeting Minutes

The Board considered the proposed Meeting Minutes for January 11, 2021. Corrections or changes were made. Motion for approval was made by Mayor Davies-Dunhour and seconded by Mr. Fischer with all eligible members voting in the affirmative.

Remand Hearing re 10315 Sunrise Drive, Blk 200.03, Lot(s) 531, 532, 533 & 534

Appearances: Colin Bell, Esq., *representing the applicant*
John Grady, Esq., *representing the municipality*
Jack Plackter, *representing Objector (Deegan)*
Brain Lozuke, *representing multiple Objectors*
Vincent Orlando, *Planning Board Conflict-Engineer*
Dante Guzzi, *expert witness on behalf of Applicant*
Andrew Chew, *expert witness on behalf of the Applicant*
Kevin Dixon, *expert witness on behalf of Objectors*

NOTE: The following is a summary of the hearing on this matter. The official recording of the hearing serves as the official record of this matter. Counsel Baldini swore in the witnesses.

Messrs. Kates, Krafczek, Poudrier and Smith were recused from the hearing.

Mr. Conrad opened the hearing by briefly describing the origin of the circumstances that led to the remanded court order. Mr. Conrad explained that on February 10, 2020, the Board granted approval for a subdivision at the property address 10315 Sunrise Drive in Stone Harbor. The decision of the hearing was subsequently challenged by a neighbor of said property and was then heard before NJ Superior Court Judge, James P. Savio.

Mr. Baldini explained the context of the scope of the application that was remanded back to the Board by summarizing Judge Savio's Order. On November 17, 2020, Judge Savio ordered the case be remanded to the Board for the sole purpose of allowing the parties in this litigation to supplement the record with additional expert testimony regarding the issue of the proposed development being consistent with the character of neighborhood. The order also directed the Planning Board to review detailed findings and to decide whether or not the benefits of granting the proposed variance outweigh any detriment the proposal may cause. Mr. Baldini then outlined the sequence of hearing and turned over the hearing to Applicant's attorney to present his case.

Mr. Colin Bell, Esq. of Hankin, Sandman, Olladino, Weintrob & Bell PC, introduced himself to members of the Board and stated he is the attorney for Charles Street Developers, LLC, Applicant of proposed development. Mr. Bell called on first expert witness, Dante Guzzi.

Mr. Baldini administered the Oath to Mr. Guzzi, a Professional Engineer of Dante Guzzi Engineering Associates. Mr. Guzzi provided his name and address for the record. Mr. Guzzi began by stating his credentials and was accepted by the Board as an expert. Mr. Baldini then entered Mr. Guzzi's Expert Report into evidence under the Exhibit titled A-1 Mr. Guzzi provided in-depth testimony regarding the limited scope outlined in the court order. Mr. Guzzi testified that in his professional opinion, the variances requested are consistent with the upland area of the other properties in the vicinity of 10315 Sunrise Drive. Mr. Bell requested the tax maps utilized in Mr. Guzzi's report be entered into evidence as A-2 (Page 19), A3 (Page 20) and A-4 (Page 23). Mr. Bell asked Mr. Guzzi's opinion about the original square footage of the lot in relation to the neighborhood characteristics. Mr. Guzzi answered that if left in its original state the lot would be exceptionally larger than surrounding lots, as opposed to being in the 50th percentile of the neighboring lot sizes if the variance is approved.

Cross examination of Mr. Guzzi followed. Mr. Jack Plackter of Fox Rothchild LLP introduced himself to the Board. Mr. Plackter began by questioning if Mr. Guzzi was a Professional Engineer, Mr. Guzzi answered that he was. Mr. Plackter then asked Mr. Guzzi if he was a licensed planner, Mr. Guzzi responded that he was not. Mr. Plackter asked Mr. Guzzi if he was aware that upland area is not part of the definition of lot size according to the Stone Harbor Zoning Ordinance. Mr. Guzzi stated that he was aware of this fact, and that he used upland area in his comparison because that is developable land. Mr. Plackter asked Mr. Guzzi if he was aware the Borough of Stone Harbor prepared and adopted the Master Plan Reexamination Report in 2019. Mr. Guzzi stated that he was. Mr. Plackter stated that the 2019 Master Plan does not recommend reduced lot size land that falls below the recommended 6600-square feet in the Residential A Zone. Mr. Plackter then asked Mr. Guzzi if he was aware that the Applicant was on the Subcommittee during the 2019 Master Plan Reexamination, and Mr. Guzzi answered that he was not.

Cross Examination continued. Mr. Brian Lozuke of Mattleman, Weinroth & Miller, introduced himself to the Board. Mr. Lozuke asked Mr. Guzzi if he was able to read a specific portion of the Judge's directive included in the court order dated November 17, 2020. Mr. Guzzi stated he was. Mr. Lozuke requested Mr. Guzzi read aloud a portion of the court order. Mr. Guzzi complied. Mr. Plackert then requested Mr. Guzzi describe parts of his report that exemplified the proposed development benefiting the neighborhood in such that the benefit of granting the variance outweighs any detriment. Mr. Guzzi answered that his report specifically addressed area of lot size for said property in comparison to neighboring lot sizes. Mr. Lozuke asked Mr. Guzzi if he

had reviewed the Master Plan or any amendments to the Master Plan prior to the hearing, researched any prior Board decisions, or reviewed safety concerns that would result from the variance. Mr. Guzzi reiterated that the concerns outlined by Mr. Lozuke were more appropriate during the review of the original application. Mr. Guzzi testified that his findings were limited to the area of lots sizes and neighborhood characteristic.

Mr. Bell then redirected brief testimony for Mr. Guzzi. Mr. Bell asked Mr. Guzzi if his opinion had changed when analyzing total square footage of lots opposed to the upland area of the lots in the area. Mr. Guzzi stated his conclusion of analyzing the total lot area was consistent with his findings when analyzing the upland area of comparable properties in the neighborhood.

Mr. Bell then called Expert Witness Andrew Chew to testify on behalf of Mr. Helbig since he was now considered a conflict of interest to the hearing. Mr. Plackert and Mr. Lozuke objected Mr. Chew's testimony stating that they were not provided with an expert report from Mr. Chew in advance of the hearing. Mr. Bell read into the record the email notifying all professional parties that Mr. Chew would be presenting Mr. Helbig's report without any additional findings or redactions. Mr. Baldini recommended that Mr. Bell's notification of this change be recorded into evidence for Judge Savio's review under the title Board-1. Mr. Baldini further recommended Mr. Chew be able to present his report because no objections were made since Mr. Bell's notification was delivered. Members of the Board decided to allow testimony based on Board-1.

Mr. Baldini administered the Oath to Mr. Chew, a Professional Engineer and Licensed Planner of Dante Guzzi Engineering Associates. Mr. Chew provided his name and address for the record. Mr. Chew stated his credentials, and was accepted by The Board as an Expert. Mr. Chew testified that he reviewed Mr. Helbig's Expert Report, visited said site and that he agreed with the findings of and was adopting the report. Mr. Bell asked Mr. Chew if he felt from a Planner's perspective if the subdivided lot fell into the characteristics of the neighborhood. Mr. Chew answered that the subdivided lot did fall in line with the characteristics of the neighborhood. Mr. Bell then asked Mr. Chew if he believed using the upland area for comparison to the neighborhood was appropriate from a Planner's perspective. Mr. Chew responded by testifying that upland area is appropriate despite the Master Plan because upland area focuses on area that is developable. Mr. Chew further explained that areas near the waterline or bulkheads are overseen by NJ DEP. Mr. Chew testified that in his professional opinion, the variances requested are consistent with the upland area of properties in the vicinity of 10315 Sunrise Drive.

Cross examination of Mr. Chew followed. Mr. Lozuke asked Mr. Chew if he prepared a Supplemental report, Mr. Chew stated he did not. Mr. Lozuke questioned Mr. Chew on the documents that were reviewed prior to his testimony. Mr. Chew responded that he had reviewed Kevin Dixon's Expert Report, Mr. Guzzi's Expert Report, several Exhibits, the Stone Harbor Master Plan, and he visited the site in-person. Mr. Lozuke then asked if Mr. Chew reviewed any historical resolutions pertaining to subdivisions heard before the Board. Mr. Chew responded by stating that he did not review any historical Board decisions because every Board decision stands on its own, so prior Board decisions are not necessarily applicable. Mr. Lozuke asked Mr. Chew if he is aware of any single application that was approved by the Board granting a subdivision for a conforming lot which resulted into two non-conforming lots. Mr. Chew responded that with the exception of the subdivision that was granted at the first Board Meeting in January, 2021, that he was not specifically aware of any other resolutions granting this request. Mr. Lozuke inquired if Mr. Chew had found any exceptions in Mr. Guzzi's Report, Mr. Chew stated that he did not. Mr. Lozuke asked if Mr. Chew reviewed the Court Order, and Mr. Chew stated that he did.

Mr. Bell redirected testimony and questioned if Mr. Chew felt that the proposed development was consistent with the neighborhood. Mr. Chew answered that the proposed development was consistent with numerous homes in the neighborhood.

The parties rested.

Mr. Baldini opened the opportunity for Board members to ask any questions relating to the expert testimony presented. The Board stated that they did not have any further questions.

Mr. Jack Plackter of Fox Rothchild LLP reintroduced himself to the Board. Mr. Plackter then called on Expert Witness, Kevin Dixon. Mr. Baldini administered the Oath to Mr. Dixon, a Professional Engineer and Licensed Planner of Dixon Associates Engineering. Mr. Dixon provided his name and credentials for the record. Mr. Dixon was accepted by the Board as an expert. Mr. Plackter asked Mr. Dixon if he had read the Court Order, the Stone Harbor Master Plan, reviewed the Application, or visited the site. Mr. Dixon stated he had reviewed all documents and had visited the site. Mr. Dixon explained his analysis of the neighborhood and included that he compared lots in the surrounding area and properties listed on the 200-foot list. Mr. Dixon also stated he used lots on the waterfront in comparison because the waterfront lots are part of the neighborhood in the area of proposed development. Mr. Dixon added that a portion of waterfront lot area is included in the definition of lot area in Stone Harbor's Zoning Ordinance. Mr. Dixon stated that the findings from his analysis showed that the original lot was consistent with the neighborhood, and if subdivided said lot is inconsistent with the neighborhood characteristics. Mr. Dixon stated that a majority of existing non-conforming undersized lots are predated prior to 1986's zoning changes. Mr. Plackert asked Mr. Dixon if he found that benefits of the subdivision outweighed the detriment of the approval. Mr. Dixon responded in depth that he found the detriment outweighs the benefits. Mr. Plackert asked Mr. Dixon whether he was aware that the Applicant sat on the subcommittee of the Master Plan Reexamination in 2019 and he stated that he was. Mr. Plackert asked a final question of whether Mr. Dixon recalled the Master Plan Report mentioning a recommendation to reduce lot sizes. Mr. Dixon stated that he did not.

Mr. Lozuke asked Mr. Dixon if he had reviewed the court order. Mr. Dixon answered that he had. Mr. Lozuke asked if Mr. Dixon had the opportunity to read Mr. Guzzi's report, and he stated that he did. Mr. Lozuke then asked Mr. Dixon if he felt the approval would create more benefits to the neighborhood than detriment and he stated that he did not.

Cross examination of Mr. Dixon followed. Mr. Bell asked Mr. Dixon about his testimony regarding the 200-foot list being the basis of the neighborhood, Mr. Bell than asked Mr. Dixon if it was true that three under-sized lots exist directly across the street from 10315 Sunset Drive. Mr. Dixon replied that that was true. Mr. Bell then asked about two additional undersized properties that fall within the 200-foot range, and Mr. Dixon agreed that the two lots referenced are partially within the 200-foot distance of said property. Mr. Bell asked Mr. Dixon if it is true that a property located on Carnival Bay was included in the comparison. Mr. Dixon answered that it was. Mr. Bell asked Mr. Dixon if it is true that there are four additional undersized lots in the area located on Carnival Bay, Mr. Dixon stated that was true. Mr. Bell asked Mr. Dixon if two smaller-sized homes were developed on the subdivided lots if they would be more consistent with the three lots located across the street than a large home built on the original lot without variances. Mr. Dixon replied that there are no requirements demanding a larger home be built on the original lot. Mr. Bell restated his question. Mr. Dixon responded that he did not know.

Parties Rested.

Mr. Baldini then opened Public Comment for the Hearing. Nine residents spoke against the approval of the subdivision and two residents were in favor of the proposed development. One non-resident spoke against the subdivision.

Mr. Plackert, Mr. Lozuke, and Mr. Bell were then given the opportunity to summarize their points.

Prior to returning the decision back to the Board for deliberation, Mr. Baldini asked new board member, Kevin Fischer, if he had the opportunity to review all necessary documentation prior to the hearing, read the transcript of the first proceeding and if he had signed the appropriate documentation acknowledging reading the transcript. Mr. Fischer stated that he did. Mr. Baldini also introduced conflict engineer, Mr. Vincent Orlando of Engineering Design Associates PA, and asked if he had anything to present. Mr. Orlando voiced that he agreed that the mission of the meeting was to review findings of facts and how they relate to the neighborhood, not a subsequent rehear with the finding of facts. Mr. Orlando expressed that he felt the Board was provided with adequate testimony from both sides to make a decision.

The Board members individually commented on the testimony heard by all experts.

Mr. Baldini phrased the Motion to find the proposed development is consistent with neighborhood characteristic and such benefits of granting the variances outweigh any potential detriment. Motion made by Mr. Fischer and seconded by Mayor Davies-Dunhour. Roll call taken. All Board members present voted affirmatively with the exception of Mr. Hand voting no.

Hearing was adjourned.

Public Comment

No one spoke.

Adjournment

Having no further business, Mr. Conrad called for a Motion to adjourn the meeting. Mayor Davies-Dunhour made the Motion and Mr. Fischer seconded.

APPROVED: February 8th, 2021

ATTESTED: 
Kate McGonagle, Secretary Stone Harbor Planning Board