

The meeting of the Bay Head Planning Board was held on Wednesday, December 15, 2010 at 7:30 p.m.

Mr. Shore read the following statement: “Pursuant to the applicable portions of the NJ Public Meetings Act, adequate notice of this meeting was mailed to the Ocean Star and posted in the corridor of this building and filed with the Bay Head Borough Clerk.”

Roll Call: Brian Shore, William Furze, David Kellogg, Kathleen Tell, Mayor Curtis, Peter Harrington, Jennifer Barnes-Gambert, Verity Frizzell, Patricia Wojcik, Edward Convey, Kathleen Wintersteen

Engineer – Susan Brasfield Attorney – Steven Zabarsky, Esq.

Absent: Bart Petrillo, Frederick Applegate

The October 20, 2010 minutes were approved as corrected, on a motion by Mr. Kellogg and seconded by Ms. Wojcik and passed with all in favor.

The first application is a continuation of the previous application, 2010-10, property located at 530 Main Ave., Block 57, Lot 17 was for 3 of a Kind, LLC.

Mr. Zabarsky stated Mayor Curtis and Ms. Barnes would have to recuse themselves. It is a Use Variance and they would not be able to sit on the application.

Mr. Zabarsky administered the certification, by Mr. Harrington, confirming he listened to the full recording of the 3 Of A Kind application from the November 15, 2010 Planning Board meeting.

Mr. Zabarsky marked this into evidence as PB -1.

Mr. Harrington is eligible to vote.

Mr. Zabarsky stated there were nine members, for a full authorized Board, to move forward on the application.

Ms. Roberta Burcz, Attorney, stated she would be representing the application.

Mr. Shore asked if there was any additional information to mark into evidence.

Ms. Burcz stated she was not sure, but wished to make a statement.

Ms. Burcz stated when we broke last time my client sensed that he was asked to do two things. One was to review and ascertain the feasibility and cost to enclose an additional area of the walk in box. We did submit a rough estimate. Of course there were a lot of things missing. The second thing was, his sense was the Board is looking to potentially compromise for a way the restaurant would be able to continue operating in such close proximity to the neighbor and to reduce the potential issues which have arisen. In fairness, we were not exactly aware of what the noise problem was. Noises can be very general. The witnesses testified with a little bit more particularity, exactly when the time of day was and that was something we had to digest. So as a result, the applicants put on their thinking caps and said we think we could be able to remove the walk in box but we would like some additional outside tables, on their own property, so we came up with a compromise.

Ms. Burcz apologized to Ms. Tuzzolino. Ms. Burcz had a lot of technical difficulties and the summary page was not attached and caused some confusion. You have all the basic information.

Ms. Burcz stated if it pleases the Board, she was going to turn it over to the applicants to come forward and explain the amended application that they feel would be a comprise. I did provide it to Mr. Gage and he would clarify that, potentially, this was something that could be more palatable than what we have right now.

Mr. Zabarsky referenced the letter submitted to Ms. Tuzzolino by Ms. Burcz, dated 12/10/10 that stating Ms. Burcz is attaching seventeen copies of a second amended Zoning Board application. The application itself says, amended 9/28/10, second amended 12/9/10 and is signed by Mr. O'Connor on 12/10/10. The application was stamped filed with the Board by Ms. Tuzzolino on 12/10/10. So, this is actually an application that requests, as I can see, a change in use to add four tables with two seats for a total of eight additional seats in the front. Part of that request acknowledges the condition of the prior Resolution which is the walk in box located to the rear of the structure has to be removed. This is not the application that was brought in front of the Board. It is totally different. One, it is not ten days prior and it is a map or document that is sought to be relied on, it is not just supplemental. Two, it appears to be a totally a separate application. It can't amend what we have. What we have is a clear request to keep the walk in box where it is and was an application to amend a prior Resolution. It violates the statute to be heard. He confirmed that new notice should have to be given, by statute, because anybody concerned with this particular application with reference to the walk in box in the rear of the building, this now would tell people that we would want to add four tables out front. This is a very different application, although the same site. So, Mr. Zabarsky's observation is, with out it being filed ten days prior, that makes it easy. The other part is he really thinks it would have to require new notice under the statute.

Mr. Shore stated it seems very cut and dry.

Ms. Burcz stated that what she heard from Mr. Zabarsky did not surprise her.

Mr. Shore stated it seems Ms. Burcz would have to file a new application and do new notice.

Mr. Zabarsky suggested this would be a new application filed. It would just require notice at this point. The question is about the pending application. Is it being withdrawn? Is Ms. Burcz asking the Board to adjudicate the application tonight? Is she withdrawing it? Or, is she saying here is plan A and here is plan B, which is a bit unique? If you don't grant me this then grant me this. Mr. Zabarsky would ask Ms. Burcz to ask her applicant what they want to do about the application the Board heard on 11/17/10.

Ms. Burcz would ask the Board to carry that.

Mr. Zabarsky asked Ms. Burcz if she is then asking the Board to make a decision on that. This is his problem, he does not know if you can ask the Board to adjudicate at the same time simultaneously a request to keep a walk in box in the back and request to comply to the Resolution prior, 2008-08, and then say, no, we'll remove it and give us four tables in the front.

Ms. Burcz stated that her client would like to be heard. When they left the last time the request was that we come up with another idea because the Board was struggling.

Mr. Zabarsky stated that you can not ask the Board, here are two applications, which one do you think is better, tell us and vote on that one. Ms. Burcz presented an application to the Board, the Board heard all the testimony you wanted to bring, you had other witnesses, you opened it up to the public and the Board was ready to vote. Your clients requested to adjourn it and come back in front of the Board for adjudication. He thinks the Board is ready to vote on the first application and that is what there here to do tonight. If you would like them to adjudicate the application you just filed he is suggesting that is not a problem. You are going to have to give new notice. They will be happy to adjudicate it, he assumes. The Board has to either adjudicate the application pending or have it withdrawn.

Mr. Zabarsky stated to Ms. Burcz he is going to advise the Board to adjudicate the first application tonight and make a decision or withdraw it without prejudice at this time.

Mr. Zabarsky stated you can not ask for both. All the testimony was heard on the 11/17/10 application. The Board was ready to vote. Ms. Burcz requested to adjourn it. You can come back for a vote on the first application.

Ms. Burcz requested to withdraw the pending application without prejudice.

Mr. Zabarsky confirmed Ms. Burcz is requesting to withdraw the pending application, not the one filed 12/10 but the one prior that was heard on 11/17/10, to withdraw without prejudice.

**There was a motion by Ms. Tell and seconded by Mr. Kellogg to have the pending application withdrawn without prejudice and passed on a roll call vote as follows:
YEAS: Shore, Furze, Kellogg, Tell, Harrington, Frizzell, Wojcik, Convey, Wintersteen
NOT VOTING: Curtis, Barnes**

Ms. Burcz confirmed she will have enough time re-notice under the statute, the application from 12/10/10, signed by Mr. O'Connor.

Mr. Zabarsky stated that our next regular meeting is January 19, 2011, the third Wednesday, in January. This application will be the first to be heard.

The next item on the agenda was for an Informal Review for renovation of the building at 532-635 Lake Ave for Mrs. Judy Davis.

Ms. Judy Davis was sworn in by Mr. Zabarsky.

Mrs. Davis stated that the building is old. There are five residential apartments and five businesses in the building. It is in dire need of being resided. There are windows on the east and north sides. The building has a historic element. Although to add a porch is not a necessity, Mrs. Davis feels it is worth while.

Mr. Furze confirmed the porch would be open.

Mr. Kellogg confirmed with Mr. Farley, a builder, the porch would come out six feet, three feet from the property line.

Ms. Davis stated she would redo the sidewalk and it would be historic. The bay windows would be left, but not to far out, to be able to walk around the windows on the porch.

Ms. Frizzell stated the site plans shows the portion to the south comes out further.

Mr. Farley confirmed to Ms. Frizzell the new roof would come out about six feet.

Mrs. Davis confirmed to Mr. Shore that the only things on the porch would be a few rocking chairs and a few planters.

Ms. Frizzell stated the existing building to the curb is almost seventeen feet.

Mrs. Davis confirmed to Ms. Tell that the porch would not be restricted to the tenants only.

Mrs. Davis agreed with Mr. Shore that awnings might be nice.

New Business:

Mr. Zabarsky stated there is no need to go into Executive Session concerning Mr. Zabarky's letter concerning Ten Sary Dom Partnership v. T. Brent Mauro and the Borough of Bay Head, dated November 22, 2010 and dated December 10, 2010. The letters were for informational purposes only. Ten Sary Dom filed an appeal and Mr. Mauro has cross- appealed.

Ordinance 2010-17 and 2010-08 were distributed to the Planning Board members for their review. Mayor Curtis gave a brief overview of the two ordinances. 2010-17 amended, Chapter 147-2, entitled "Definitions" as to the permitted uses in a residential zone. 2010-18 pertained to the definition of the term "Sight Triangle". After a ten minute recess to allow the Planning Board members to review the ordinances a motion was made by Mr. Kellogg seconded by Ms. Tell that Laura Tuzzolino, Planning Board Clerk, may write a letter to the Council in favor of Ordinance 2010-17 as written.

Roll Call:

YEAS: Shore, Furze, Kellogg, Tell, Frizzell, Wojcik

NAYS: Harrington, Convey, Wintersteen

NOT VOTING: Curtis, Barnes

After the review of Ordinance 2010-18, there was a motion by Ms. Tell seconded by Mr. Kellogg to send a letter to council disapproving Ordinance 2010-18 because it is inconsistent with Sec: 147-6F with all in favor.

Roll Call:

YEAS: Shore, Furze, Kellogg, Tell, Harrington, Frizzell, Wojcik, Convey, Wintersteen

NOT VOTING: Curtis, Barnes

Historic Preservation Ordinance:

Mr. Shore stated two interviews are being scheduled to interview historic preservation experts. We are awaiting there proposals.

The next meeting will be after the New Year. The experts would want to be present.

Mayor Curtis sated he would like the Planning Board's authority for the Chairman to hire these professionals at this time. We can utilize the 2010 Budget funds if we get that authority. This way it will not be out of the 2011 Budget.

There was a motion by Mayor Curtis, seconded by Mr. Kellogg to approve the ability to hire the professionals with an all in favor.

Roll Call:

YEAS: Shore, Furze, Kellogg, Tell, Harrington, Frizzell, Wojcik, Convey, Wintersteen

NOT VOTING: Curtis, Barnes

Mr. Shore opened the floor for public comment.

Mr. O'Connor, 854 Main Ave., addressed the Board.

Mr. O'Connor stated that obviously the Planning Board is going to say "No". If he has to put the refrigerator back inside after spending \$25,000 on various costs he is selling the restaurant.

Mayor Curtis stated it would be a tragedy if it were sold.

Mr. Shore closed public session.

A motion was made by Mr. Kellogg, seconded by Ms. Wojcik to pay the following vouchers:

Maser/336 Main Ave.	296.00
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There being no further business the meeting was adjourned.

Respectfully Submitted,

Laura Tuzzolino

