

**The meeting of the Bay Head Planning Board was held on Wednesday, January 19, 2011 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, Bart Petrillo, Peter Harrington, Jennifer Barnes-Gambert, Verity Frizzell, Patricia Wojcik, Edward Convey, Kathleen Wintersteen, Fred Applegate**

**Absent: Mayor Curtis**

**Engineer – Susan Brasefield**

**Attorney – Steven Zabarsky, Esq.**

**The following current members were sworn in by Mr. Zabarsky:**

**Class II – Bart Petrillo**

**Class IV – Verity Frizzell**

**Alternate #1 – Patricia Wojcik**

**Alternate # 3 – Kathleen Wintersteen**

**The following members were elected as officers:**

**A motion was made by Ms. Frizzell and seconded by Mr. Petrillo to elect Brian Shore as Chairman. All in favor.**

**A motion was made by Mr. Kellogg and seconded by Mr. Harrington to elect William Furze as Vice-Chairman. All in favor.**

**A motion was made by Ms. Barnes and seconded by Mr. Petrillo to elect David Kellogg as Secretary. All in favor.**

**A motion was made by Mr. Kellogg and seconded by Mr. Harrington to elect Kathleen Tell as Assistant Secretary. All in favor.**

**A motion was made by Mr. Petrillo and seconded by Ms. Barnes to appoint the following:**

**Attorney                      Steven Zabarsky, Esq.**

**Engineer                      Susan Brasefield/Maser Consulting**

**Clerk                              Laura Tuzzolino**

**All in favor.**

**A motion was made by Mr. Furze and seconded by Mr. Harrington to designate meeting dates and time as the third Wednesday of each month at 7:30PM and to designate the Ocean Star and Asbury Park Press as the Official Newspaper. All in favor.**

**The November 17, 2010 minutes were approved as corrected, on a motion by Mr. Convey and seconded by Ms. Frizzell and passed with all in favor.**

**Addition by Ms. Frizzell: The was statement made by Mr. Burdick, referring to application 2010-10, 530 Main Ave., Block 57, Lot 17 as a “beneficial use”.**

**The December 15, 2010 minutes were approved on a motion by Mr. Petrillo and seconded by Ms. Tell and passed with all in favor.**

**Mr. Shore stated there were no resolutions for approval.**

**The first application, 2011-101, property located at 530 Main Ave., Block 57, Lot 17 was for 3 of a Kind, LLC.**

**Mr. Zabarsky stated that the application 2011-01 was filed on January 4, 2011 - 3 Of A Kind, LLC. The applicant is seeking to maintain the status quo of the restaurant operation and seeks relief from the prior resolution. The applicant is also seeking a waiver from the site plan requirement.**

**Mr. Zabarsky stated that both Mr. Gage and Ms. Burcz had received each other letters. Mr. Gage’s letter, dated January 13, 2011 and Ms. Burcz’s letter dated January 19, 2011. Mr. Zabarsky stated he had received copies of both letters.**

**Mr. Zabarsky stated that based on those letters and based on the application there is a request by the applicant through council. Mr. Zabarsky read Ms. Burcz letter, dated January 19, 2011.**

**Mr. Zabarsky stated that after his investigation, this is a new application. The application previously before the Board, under the prior number, 2010-10 was heard at the November 17, 2010 meeting. Application 2010-10 was withdrawn without prejudice at the December 15, 2010 meeting. So he we are with a new application, dated January 4, 2011, application 2011-01.**

**Mr. Zabarsky stated that to have the prior testimony and prior exhibits from the prior matter be considered in this application, Mr. Zabarsky suggested to the Board it would be inappropriate. It is a new application. If there was anybody in this audience tonight on this application that was not here for the first application and that testimony for that prior application is asked to be considered tonight, those persons did not have the right under the statute to cross examine those witnesses that are here tonight. Also, this Board under the statute would not be allowed to take testimony from some hearing whether it was two months ago or two years ago and say we will consider that part of the application. It defies the nature of the statute, the nature of the due process under the constitution of what a hearing is supposed to be which is, everybody has the right to be heard and cross examine witnesses that are presented. So, this is a new application. It is a new matter. It stands on its own merits and the Board needs to consider it as such.**

**Mr. Zabarsky stated, that from Ms. Brasefield's letter dated January 13, 2011, the applicant requests a waiver of the application fee, site plan and updated survey. The application was deemed complete in Ms. Brasefield's letter dated January 6, 2011 based on the approval of waivers for the fee, survey and site plan. Mr. Zabarsky stated that these are items we need to deal with.**

**Ms. Barnes and Mr. Petrillo recused themselves from the application.**

**Ms. Roberta Burcz was sworn in by Mr. Zabarsky.**

**Ms. Burcz stated that she represents the applicant. Ms. Burcz stated that she agrees it is up to the discretion of the board whether or not to accept the old testimony. Ms. Burcz would like adjudication as to the housekeeping matters, if the Board is going to require a new application fee, a site plan and an updated survey. This would give us some guidance. We would obviously have to ask for an adjournment. We are going to have to present the case in full as she had indicated in her letter today. She would like the Board to vote on those items.**

**Mr. Gage stated he is representing Mr. and Mrs. Urner, Mr. and Mrs. Waterbury and Lauren Payne. Mr. Gage agrees with Mr. Zabarsky that this is a different application and the testimony and evidence for the previous application should not be considered. Mr. Gage would like to leave the decision on site plan and survey to the Board's discretion as well as the fees. Regarding an adjournment however, if the application is adjourned to February, it will be the fourth appearance on this matter. It is not complicated as far as the facts are concerned. There is no reason we should not be prepared this evening to present and vote. Mr. Gage deferred to the Chairman's discretion.**

**Mr. Shore stated to Ms. Burcz, he feels the law is fairly cut and dry. He is not going to put the Board in the position where we are going to be bringing testimony in from a prior hearing and no one can cross exam the witnesses that gave testimony in that hearing. Mr. Shore stated that Ms. Burcz has a choice, proceed tonight under a new application giving testimony or perhaps come back again. Mr. Shore reviewed with the Board their feelings about adjourning again for another month.**

**Ms. Burcz stated she is not prepared to move forward tonight as stated in her correspondence. We do not have all our witnesses and we would have to supply all the copies. Ms. Burcz did not do this and since they were not supplied the Board does not have all the documents.**

**Mr. Shore asked the Board their thoughts on waiving the site plan.**

**Ms. Tell made a motion to wave the requirement of submittal of the site plan. Ms. Tell stated that we have had this case before enough times and she does not think anything on site has changed. Ms. Tell feels it is unnecessary.**

**The motion was seconded by Mr. Harrington.**

**Roll Call:**

**YEAS: Shore, Furze, Kellogg, Tell, Harrington, Convey, Wintersteen, Applegate**

**NAYS: Frizzell**

**Mr. Zabarsky stated it is a vote eight to one in favor of waiver of the formal site plan requirement. That is waived.**

**Mr. Shore asked the Board their thoughts on waiving the survey.**

**Mr. Zabarsky stated that for future applications, if they are not going to submit an updated survey that at a minimum the survey they do submit should be attached to a survey affidavit so under oath its certified to be a current survey.**

**Mr. Kellogg confirmed with Mr. Zabarsky that it would be the applicant that would certify it.**

**Ms. Burcz stated that the survey was approved in 2008 and showed the concrete pad, the fence and the removal of a locker. It was hand written onto the survey.**

**Mr. Zabarsky stated to Ms. Burcz that she could do a survey affidavit that it has not changed except for the hand written notations that are placed on the survey.**

**Ms. Burcz said she could do that.**

**With a survey affidavit they are depicting what an engineer or a professional land surveyor drew on their survey has not changed. In this case the information we have was drawn by an applicant not by a licensed surveyor. So the site plan we have on file is not a legal document. That is why Ms. Frizzell voted no.**

**There was a motion by Ms. Tell and a second by Mr. Harrington to waive the updated survey requirement if there is a survey affidavit attached showing the changes on the survey.**

**Roll Call:**

**YEAS: Shore, Furze, Kellogg, Tell, Harrington, Convey, Wintersteen, Applegate**

**NAYS: Frizzell**

**Mr. Shore asked the Board their thoughts on waiving the application fee.**

**There was a motion by Ms. Tell and a second by Ms. Wintersteen to waive the three hundred dollar application fee for application 2011-01.**

**Roll Call: Shore, Furze, Tell, Harrington, Convey, Wintersteen, Applegate, Frizzell**

**NAYS: Kellogg**

**Mr. Zabarsky stated that it is a vote eight to one in favor of waiver of the application fee. The application fee is waived.**

**Ms. Burcz stated she would provide the appropriate attachments which she did not supply and then come back next month and have the case heard.**

**Mr. Shore confirmed with Ms. Burcz that it is not just the attachments, but the experts will be testifying as well.**

**Mr. Shore polled the Board and requested Ms. Burcz supply five sets of the appropriate attachments.**

**There was a motion by Mr. Harrington and a second by Ms. Wintersteen to adjourn the application to next months Planning Board Meeting on February 16, 2011.**

**Ms. Tell interjected to state how she is concerned about the unfair burden on the opponents. It is unjust and can not continue.**

**Mr. Shore stated to Ms. Burcz that he agreed with Ms. Tell that it is unfair to both her client and the opponents and for Ms. Burcz to be prepared and all ready for next month's meeting.**

**Roll Call: Shore, Furze, Kellogg, Tell, Harrington, Frizzell, Convey, Wintersteen, Applegate**

**Zabarsky stated the matter is adjourned to February 16, 2011 without the necessity of re-noticing.**

**Mr. Shore stated the next application is 2011-02, property located at 623 East Ave., Bay Head, NJ a/k/a/ Block 66, Lot 12.**

**Mr. Shore confirmed with Mr. Zabarsky that no use variance is needed for this application. Mr. Zabarsky cited Ordinance 147-15 A (2). It is a preexisting, non conforming condition and does not require review or a variance.**

**Mr. Shore stated we will strike item 1A from page two of the engineer's letter, dated January 13, 2011.**

**Mr. Zabarsky confirmed to Mr. Shore and to Mr. Kellogg that the letter the Planning Board Members received, written by the neighbor of the applicant can not be taken in to consideration and can not be responded to. That neighbor had the right to be here and to participate or hire council and did not do so.**

**Mr. Gage stated he will be representing the application.**

**Mr. Gage stated that Ms. Brasefield's letter stated that the lot is non-conforming in lot size. Mr. Gage stated that lots are conforming in an R-100 zone if they are a minimum of 50 feet wide and 5,000 sq. ft. of footage if that lot existed as of May, 1977. So this is a conforming lot.**

**The following were marked into evidence:**

**A-1 Application, dated December 22, 2010**

**A-2 Denial Letter from Zoning Department's Mr. Petrillo, dated, November 23, 2010**

**A-3 Survey, dated May 20, 2010**

**A-4 Plot Plan, dated 12/16/10 and Renovation Drawings 1-3, dated 12/17/10**

**A-5 Letter from Planning Board Engineer, dated January 6, 2010 – Deeming the application complete**

**A-6 Review Letter from the Planning Board Engineer, dated January 13, 2011**

**A-7 Plot Plan for Block 66, Lot 12, dated 1/16/11 with additional pen ink**

**A-8 Poster Board from Lederer & Wright of Renovations, dated 1/17/11 with additional red & blue markings**

**A-9 Colored Photo by Mr. Lederer, taken 6 months ago**

**A-10 Proof of Publication**

**A-11 Proof of Service**

**Mr. Gage stated he will have two witnesses this evening Mr. Maschler, the applicant and Mr. Lederer as far as the technical aspects.**

**Mr. Maschler was sworn in by Mr. Zabarsky.**

**Mr. Gage confirmed with Mr. Maschler that 623 East LLC is the owner of this property and asked Mr. Maschler to tell the Board why he was here.**

**Mr. Maschler stated him and his wife had purchased the home last year from the estate of her grandparents. They contacted Mr. Lederer to discuss renovations. The porch needed to be addressed as well as the kitchen. They would like to bump out the main floor below the existing porch which would allow them to have a proper size kitchen on the main floor as well as to support the porch on the west side. This application is for a variance where the western porch overhangs. It is a strange property line from the neighbors to the north. No one new this for the last one hundred years. It is not an issue between us and the neighbors. We were advised that if we were going to build down we should seek a variance for nature of how that porch overhangs to that property line. That is what we are doing here.**

**Mr. Maschler confirmed to Mr. Kellogg that they did not know about the jagged line until they began their due diligence when they were purchasing the home.**

**Mr. Maschler confirmed with Ms. Frizzell that they may later have conversations with the neighbor about buying the land from them to straighten out the line.**

**Mr. Gage stated he asked the neighbor that questions and the answer was negative. Mr. Lederer, architect, was sworn in by Mr. Zabarsky.**

**The following were marked into evidence by Mr. Zabarsky;**

**A-7 Plot Plan for Block 66, Lot 12, dated 1/16/11 with additional pen ink**

**A-8 Poster board from Lederer & Wright Partnership with renovations, dated 1/17/11 with additional red & blue markings**

**A-9 Colored Photo by Mr. Lederer, taken six months ago**

**Mr. Lederer stated that this is a home that has been around for a long time. At some point there was a porch added to the west side of the structure and is located at the second story level. It hangs over the original face of the building. It is held in place by some forty five degree struts or braces. It is starting to sag. Looking at the lay out several things became apparent. The kitchen is located in the basement which was a traditional arrangement from the past. The first level has a small galley kitchen with a dumb waiter. With the number of people that will be using the home, additional bathroom facilities became a big issue. So using that porch space and enclosing it would add two additional bathrooms. Enclosing the first level would double the size of the kitchen. We support the structure with solid piers for a stronger structure.**

**Mr. Lederer confirmed with Ms. Frizzell that there is currently a permit in place for the work being done that does not need a variance.**

**Mr. Lederer confirmed to Ms. Tell that part of the south end of the porch will be removed. The first six feet of the porch from the south heading towards the north will be removed. The north to the south will remain.**

**Ms. Frizzell confirmed with Mr. Lederer that he is going to reconstruct the porch. They are going to in fill it and put some bathrooms in it. The existing roof is going to stay.**

**Ms. Frizzell asked Mr. Lederer, don't you need approval from the Board to rip down the porch and rebuild it the exactly as it is?**

**Mr. Zabarsky stated that the porch is in the front setback. No variance is needed.**

**Ms. Frizzell stated the corner is the setback.**

**Mr. Zabarsky stated that the applicant is getting a variance for that.**

**Mr. Gage stated that there would only be a problem if during the renovation stage it is determined that more than fifty percent of the entire structure would have to be taken down.**

**Mr. Lederer confirmed he is looking to rehabilitate the home and to use it in a more functional way. The basic structure will remain.**

**Mr. Gage confirmed with Mr. Lederer that the non conformity that we are here about currently exists. Mr. Lederer confirmed they will not be projecting out any further into the setback.**

**Mr. Lederer stated that the porch is already on the ground and counts as lot coverage. We are not changing the lot coverage.**

**Ms. Frizzell confirmed that the footage allowed into the side setback of an overhang is 2.5 feet. The corner of the gambrel is in the setback. Ms. Frizzell is checking to see if the variance would cover this.**

**Mr. Shore asked Mr. Lederer where the variance is?**

**Mr. Lederer referred to drawing 1 of exhibit A-8. The dark gray area shows the property line.**

**Ms. Frizzell referred to sheet 2 of exhibit A-8. It shows a shaded area where the wall is that projects forward and that is where that section passes that gambrel roof. So the light line that is shown to the northwest corner of that is the edge of the roof. Ms. Frizzell stated the rake of the roof is in the side yard setback.**

**Mr. Shore asked Mr. Lederer why doesn't the setback line continue right down to the front of the property?**

**Mr. Lederer stated the setback line follows the configuration of the side yard in this case it happens to have a jog in it which causes the side yard setback condition.**

**Ms. Tell wondered, why isn't that perpendicular north south line considered the front yard so we can just continue the east west line that is the side yard all the way down the property.**

**Mr. Lederer stated it is the side yard.**

**Mr. Kellogg stated that twenty five square feet of this enclosure is violating the setback.**

**Mr. Lederer confirmed with Ms. Frizzell that besides the one bathroom in the basement the only other finished space may be game space and that the ceilings are eight foot. It is a full story.**

**Mr. Lederer confirmed with Mr. Shore that the height elevation of the gambrel roof is 33.33 feet.**

**Mr. Lederer confirmed with Ms. Tell that the gambrel roof projects out two feet from the existing structure.**

**Ms. Frizzell confirmed with Mr. Lederer that the purpose for extending the deck in the side yard is to get access to the kitchen and that it does not violate any issues with the setbacks.**

**Mr. Lederer confirmed with Mr. Gage the two air conditioning units will be within the setbacks and will be on a 40-45 square foot platform for base flood elevation. They will be screened with a fence.**

**Mr. Kellogg confirmed with Mr. Lederer the outside of the house will be new cedar shakes.**

**Ms. Frizzell confirmed with Mr. Lederer that they are reducing the length of that porch therefore reducing the overall building coverage.**

**Mr. Lederer stated they are taking about 41 square feet off of the porch.**

**Mr. Gage confirmed with Mr. Shore that the deck over the dune will comply with the dune ordinance.**

**Mr. Shore opened the meeting for public comment.**

**Ms. Frizzell asked if that alteration to that façade will have any effect on our historic designation?**

**Mr. Harrington commented he would have to look into this.**

**Mr. Lederer stated it is certainly their intention to keep the character of the house and to improve its' image to some degree. He feels the structure is not being violated. It is obvious that this structure has been changed many times so it is certainly not what it started out to be. It is not a great example of a classic style. It has a lot of alterations and additions to it. Mr. Lederer would like to modulate them and bring everything together to make everything a little more stylish.**

**Mr. Harrington noted that from the north and south of the property you can see a shed roof that is a gambrel style so it does, as much as it can, replicate what its already existing.**

**There being no public comment, Mr. Shore polled the Board members.**

**Mr. Applegate - In favor. It is a minimal alteration to the setbacks**

**Ms. Frizzell – Absolutely yes, it is a great addition**  
**Ms. Wintersteen – Agrees**  
**Mr. Convey – Yes**  
**Mr. Furze – Concurrs**  
**Ms. Tell – Agrees**  
**Mr. Kellogg – Agrees. Thank you for not tearing it down**  
**Ms. Barnes – In favor**  
**Mr. Shore – In favor**

**There was a motion by Mr. Kellogg and a second by Ms. Barnes to approve the application.**

**Roll Call:**

**YEAS: Shore, Furze, Kellogg, Tell, Petrillo, Harrington, Barnes, Frizzell, Convey**

**Mr. Shore asked Mr. Zabarsky what they would have to do to make the survey affidavit a requirement.**

**Mr. Zabarsky stated that you would have to amend Sec 147-44 of the Land Use Ordinance.**

**Mr. Kellogg stated that it is on the application “property survey, all applications”.**

**Mr. Zabarsky confirmed that it is part of the check list which is approved through the ordinance.**

**Ms. Brasefield sated you would have to consider on a case by case basis if they ask for a waiver.**

**Mr. Shore agreed with Mr. Zabarsky that the Board can make it a condition of approval. Just that the record is clear that they have certified under oath the survey is accurate.**

**Mr. Petrillo stated that if he refers them here they have provided him some sort of survey or plot plan to show what is to be done. He is not going to review it unless he has some sort of document that is going to show exactly what is on the property.**

**Mr. Kellogg stated that everyone has a survey. The question is if it is current and if it is not then you can ask for an affidavit or a new survey.**

**Mr. Shore stated that the Board will leave it as is, on a case by case basis.**

**Historic Preservation Ordinance:**

**Mr. Shore stated there has been some progress made on the Historic Preservation Ordinance. Mr. Furze, myself, Mr. King and D'Arcy Green met with two experts and interviewed them as to how they can assist Bay Head with moving forward with the Historic Preservation Ordinance. Both were qualified but we strongly felt that McCabe & Associates were more qualified. He has forwarded us a proposal which he outlines the actual things he would do for us. This would include writing a Master Plan element that has to do with historic preservation as well as writing the Historic Preservation Ordinance. Also attend the public meetings to answer questions.**

**In addition to that, with the help of Ms. Barnes and Ms. Green we were able to encumber eight thousand dollars from the 2010 budget that we had left over, specifically for this project.**

**Tonight Mr. Shore would like to ask the Board to approve hiring McCabe & Associates to perform that work. We would need a motion and a second.**

**Mr. Zabarsky stated that if the governing body has given you an indication of what they have in this years' budget he thinks the Board should cap it at eight thousand dollars and tell that to these people and add the seven hundred fifty dollars later.**

**Ms. Tell wished to learn a little more.**

**Mr. Shore confirmed that he is a licensed planner. He has vast knowledge and comes highly recommended. He gave an excellent presentation. Everyone was impressed by him.**

**Mr. Furze stated that Mr. McCabe mentioned that there are certain activities the Planning Board, Board of Adjustment can do that is not subject to the scrutiny of the council.**

**Mr. Shore confirmed to Ms. Tell that Mr. McCabe works in conjunction with the members of the committee we have in place. He will submit questions he would need answers to and then hold a meeting to discuss what he feels the best approach is for both the Master Plan element and the Historic Preservation Ordinance itself. He will not be working independently. He has written ordinances for the towns of Beach Haven and Hopewell Township.**

**There was a motion by Mr. Furze and a second by Mr. Harrington that the Planning Board encumber eight thousand dollars to engage McCabe & Associates.**

**Roll Call:**

**YEAS: Shore, Furze, Kellogg, Petrillo, Harrington, Barnes, Frizzell, Convey**

**NAYS: Tell**

**Ms. Tell wishes no disrespect to those who met with Mr. McCabe, Ms. Tell just feels it her duty to educate herself a little more.**

**Mr. Shore stated he would also like to hire an attorney that has a historic preservation background just to review the ordinance that comes out of Mr. McCabe's process. We would only need a few hours of his work but we have encumbered funds specifically for that in the amount of one thousand dollars. His rate is one hundred fifty dollars per hour.**

**There was a motion by Peter Harrington and a second by Ms. Frizzell to hire Mr. Frederick Raffetto at a capped amount of one thousand dollars.**

**Roll Call:**

**YEAS: Shore, Furze, Kellogg, Petrillo, Harrington, Frizzell, Convey**

**NAYS: Tell, Barnes**

**There were no vouchers to be paid.**

**There being no further business the meeting was adjourned.**

**Respectfully Submitted,**

**Laura Tuzzolino  
Board Clerk**





