

The meeting of the Bay Head Planning Board was held on Wednesday, October 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, Mayor Curtis, Bart Petrillo, Peter Harrington, Jennifer Barnes-Gambert, Verity Frizzell, Patricia Wojcik, Kathleen Wintersteen, Frederick Applegate

Absent: Edward Convey

Engineer – Justin Yost Attorney – Steven Zabarsky, Esq.

The September 21, 2011 minutes were approved as corrected on a motion by Ms. Barnes and seconded by Mayor Curtis and passed with all in favor.

Mr. Shore stated the next item on the agenda is the application for Lionel and Dana Jorge, property located at 41 Johnson St., Bay Head, NJ a/k/a Block 82, Lot 7.

Mr. Zabarsky confirmed that there is a full nine member Board. The three alternates that are here can participate in the application but will not be able to vote as our full membership is nine.

The following were marked into evidence:

A-1 Application, dated September 28, 2011

A-2 Denial Letter from Zoning Officer Bart Petrillo, dated September 20, 2011

A-3 Survey by Ronald W. Post Surveying, Inc., dated October 29, 2010

A-4 Survey & Plot Plan by Ronald W, Post Surveying, dated September 28, 2011

A-5 Architectural Drawings 1-6 by Michael Melillo, AIA, dated September 28, 2011

A-6 Letter from the Planning Board Engineer, dated October 7, 2011 deeming the application complete.

A-7 Review letter from the Planning Board Engineer, dated October 13, 2011

A-8 Proof of Service

A-9 Proof of Publication

A-10 Colored rendering of the proposed structure listed as sheet one of six by Melillo Architecture

Mr. Lionel Jorge was sworn in by Mr. Zabarsky.

Mr. Jorge addressed the Board. He is seeking a variance approval. He was approved for an addition and an alteration at the home located at 41 Johnson. They had suffered some mold issues. They originally purchased the home and spent over \$10,000.00 trying to cure the mold issue. He had thought the mold had been resolved at that point. Over the last couple of summers, they have owned the home for about two years, they have had a continuous smell throughout the house. When they started the construction project they quickly realized that the mold was in a re-growth stage. It was continuing to grow throughout the home. The biggest issue being the crawl space not having enough ventilation, according to some of the specialist we had come in. So, although the project has

been approved for an addition and alteration, at this point the only way we can really cure the issue is by taking care of the foundation and raising the home an extra twenty inches. They are not looking to change any other drawings or alter any part of the home in exception of raising the home.

Mr. Jorge stated he has two expert witnesses with him tonight. Mr. Mark Ostojich, from Melillo Architecture and Mr. Sal Conte, construction manager from SGC Construction. Today's variance is really about being able to raise the home the additional twenty inches and to maintain the same architectural design that was originally put together.

Mr. Petrillo confirmed to Mr. Kellogg that the original set of plans that were approved was an addition conforming to the part of the house that conformed. The issue came up with the section in the front where it was 8.80ft. off the side and 24.9ft. That section is what Mr. Conte came to him about wanting to demolish it and to raise it. Mr. Petrillo told him that he would need a variance if he wanted to demolish and raise it. Apparently, they found other issues after that as far as the rest of the house.

Mr. Petrillo stated if he were just going to raise the house, in place, with out demolishing anything that is fine. In order to raise this front section you can't raise it without raising the whole house which they can not do. Once the front part is demolished it is gone technically and it has to be brought back to conform. If you do more than 50% of the structure you have to bring it back into conformity.

Mr. Conte confirmed to Mr. Zabarsky at this point the entire house would have to be demolished and rebuilt because it is the entire foundation that would have to be raised.

Mr. Zabarsky stated, just so the record is clear, the structure that exists there now, the proposal in the application is that it be completely demolished. The Board understands once that occurs then there is no preexisting non- conforming condition. It is considered a vacant lot. At that point, all the variances and burden of proof on the applicant must be met as to the positive and negative criteria for all variances.

Mr. Conte stated the garage will not be taken down. There may be a re-sheathing and maybe a new roof.

Ms. Wintersteen confirmed that it is still a demolition even if the garage stays and they should be rebuilding within the required setbacks.

Mr. Zabarsky stated that they are applying for a variance for those setbacks.

Mr. Zabarsky, per Ms. Tell's request, reviewed the burden of proof that must be met.

Mr. Zabarsky confirmed with Mr. Shore that even if they were building a new house that conforms they would still need a variance for the garage. It is like it is a vacant lot.

Mr. Ostojich, Project Manager from Mellilo Architecture was sworn in by Mr. Zabarsky.

Mr. Zabarsky stated Mr. Ostojich is not a licensed architect and will not be qualified as an expert but can give testimony.

Mr. Ostojich confirmed to the Board that the plans have already been approved, a permit has been issued and construction has started. In the demolition process the mold issue had come up. That is where there is a 50% threshold. He is afraid they are going to go above the threshold if we remove the drywall and remediate the mold that is there. That is really what the concern is. The client does not want to spend all this money to keep the house and have the mold come back. He thinks the better thing to do is to raise the house and to get some better ventilation.

Mr. Jorge stated that this is really a safety and health issue for his family. His son particularly, is very allergic to mold. He has experienced some issues last summer. After they had taken him to the doctor it was proven he has some mold issues.

Mr. Shore asked if the whole lot was cleared, could he build the same house set back differently to meet the setback requirements? Could it be shifted to avoid the variance?

Mr. Ostojich stated that almost anything can be done. It depends on the money. We can save money by saving the foundation that is there and just adding two and a half courses of block to it.

Mr. Ostojich confirmed with Ms. Tell that they are in the AE zone and are not required to build on pilings. They are installing helical piles.

Mr. Ostojich confirmed with Ms. Frizzell that they are in the flood zone.

Mr. Sal Conte, Project Manager from SGC was sworn in by Mr. Zabarsky.

Mr. Conte stated that when he removed the sheetrock on the inside he found some mold. He has a remediation report and a bill from two years ago when Mr. Jorge purchased the property that he had expended about \$10,000.00 to remediate. Mr. Melillo came in at the same time and presented them with a set of plans as to how they could solve the problem. These drawings were submitted and were approved. The question came in with the second floor addition that we are placing on the home. The new addition we are going to place on the house is conforming. We needed to increase the crawl space about six inches because it is below the exterior grade. Mr. Conte asked Mr. Petrillo if we jacked up the entire house and raise it, does it bring it to that 50% threshold?

Mr. Petrillo stated that if you remove any of the front walls or side walls where the variance is required, you are going to come in front of the Board.

Mr. Conte told Mr. Jorge that they should go in front of the Board and get an opinion from the Board. If they grant us a variance great, we will do whatever the Board asks. They will remove it, keep the foundation, raise it up two courses, two and a half courses and make it compliant. The second floor will be compliant. They are just asking for a front yard and a side yard variance on a preexisting home that was there.

Mr. Conte stated that the existing plan is to keep the existing foundation, add to it and to rebuild.

Ms. Tell asked Mr. Conte the purpose of preserving the foundation.

Mr. Conte stated it is because of the cost. They have not done a cost analysis because they did not know how the Board was going to react.

Mr. Conte confirmed to Ms. Frizzell that they do not know why the mold is growing. They did install a vapor barrier with stone on top. That acts similar to concrete. Also, if the plastic that is down stays stable it should stop the moisture from coming up.

Mr. Conte stated to Ms. Frizzell that after they drove the helical piles in, they would install concrete because the crawl space needs to be brought up about six inches. You have to go with the highest grade because you have to be above the exterior grade. Roger Post told them if you are going to go for one course you might as well go for two. The height of the house will still be conforming.

Mr. Zabarsky marked into evidence A-10, a colored rendering of the proposed structure listed as sheet one of six by Melillo Architecture.

Ms. Tell stated that the houses and the tree line in the surrounding area are fairly short and was trying to get a sense whether this house would be much higher than the surrounding homes.

Mr. Conte stated that the one area of the house has vaulted ceilings and on the second floor is only the master bedroom.

Mr. Ostojich stated that the house is aesthetically pleasing and matches the homes in Bay Head. They were not here for a height variance. They are here because of the mold issue.

Mr. Furze stated he has no problem with the front yard setback because of the context of the building. It is a vast improvement over the current structure that is there. Helical piles are expensive. If you find out financially it is more appealing to put in a new foundation then he would opt to say go ahead and make the building conform, which apparently it can by looking at the site plan. It could move west or it could move south.

Mr. Conte stated they have had soil bearing tests. They have to put piles in for structural reasons. These piles would let them build on the existing foundation.

Mr. Conte stated that the height would be relatively the same. They would raise the house but change the pitch of the roof.

Mr. Kellogg stated since so much of the burden of proof is on the applicant to prove positive and negative he thinks the Board needs to know how much money you may save by keeping the existing foundation.

Mr. Conte would assume the savings to be around \$25,000 to \$30,000.

Mr. Jorge stated to Mr. Applegate that the home would be set back further than most.

Mr. Jorge stated to Mr. Shore that they have taken out an above ground oil tank located in the side yard setback. They have decided not to go with oil heat.

Ms. Frizzell stated in going back to the burden of proof, she does not see an exceptional shape to the lot or topography. Exceptional circumstance could be perhaps the crawl space and the mold. Ms. Frizzell thinks the positive and negatives in the zoning need to be discussed.

Mr. Ostojich stated there are no real positives to speak of on the first floor obviously because they are over the setbacks. The second floor is conforming. They are also trying to elevate the first floor to conform to the 18 inch minimum required.

Mr. Conte stated that if the Board would like they could have some sort of privacy trees or a fence to the east side yard setback.

Mr. Shore stated the bottom line is the applicant would not even have to be here if it weren't for the mold. So he would consider that a special circumstance.

Mr. Zabarsky stated that this is in an R-100 zone so there is a 10,000 sq. ft. area requirement and a 100 ft. width. This is a 95 by 100 and that is of exceptional narrowness, shallowness or shape of the property. So they would need a variance for the area and for the width as well.

Mr. Jorge stated that due to the size of the lot to the front setback he thinks that there is an improvement over the existing structure that is there. He had no intention of being here if it weren't for the mold problem. The new height complies with the Borough of Bay Head limits. It is actually two feet under that. They are simply looking for a healthy, safe and wonderful summer home for his family.

Mr. Shore opened the floor for public comment.

Mr. Stan Niedzwiecki, 42 Johnson St., was sworn in by Mr. Zabarsky.

Mr. Niedzwiecki stated he is the neighbor across the street. The property is an improvement. He hopes the Board goes along with their request. He thinks the important thing here is that they do have a son that has a respiratory problem. You can't just live in a mold problem. Everybody is forgetting about two things. The street has a sewerage problem because of the trees that are in the neighborhood. Also, there is only parking on one side of the street. The good thing about this neighbor is he has a wide enough driveway, that when he has all his company in the summer, they all fit in the driveway. The plans presented are very well. Mr. Niedzwiecki stated that in order to be a member of the Board you should personally go to inspect the property.

Mr. Shore closed public comment and polled the Board.

Ms Tell: Stated that she feels this is an inappropriate exercise of our variance function because basically this is an application to build a new home. We do not know if they are going to be using this foundation. We do not have a clear sense of what the cost will be. This house will be ten feet closer than the front yard setback than it currently permits. It is important to protect those front yard setbacks. The cost to the owner may be appropriately considered but we also have to consider how this finished product fits in with our zoning philosophy. It encroaches into the front yard setback and the side yard setback. It has a pretty big garage that is right on the lap of the neighbor to the west. It increases the bulk. Ms. Tell thinks it will be substantially bigger than the other houses behind it on Bristol. It is detrimental to the zoning plan. Ms. Tell would vote against the application.

Ms. Frizzell: Given the house already had a housing permit, absent that they had this issue, it would have been built. She tends to be more in favor of the application. They kept the front low and the portion that is inside the setback is not a two story house. The piece in the front is not harming the neighborhood. Ms. Frizzell would be in favor of the application.

Mr. Applegate: Agrees with Ms. Frizzell. That house is going to actually be set back further than any other house on Johnson Street. They are willing to buffer the side yard for the neighbor. He would be inclined to agree with the application.

Ms. Wintersteen: Agrees with Ms. Tell that once you demolish this house, the new house should be within allowable setbacks. Ms. Tell would not be in favor.

Mr. Harrington: Yes, they are keeping what is in the setback low.

Mr. Furze: Agrees with both Ms. Tell and Ms. Frizzell. The context is all important. It is a nice effort. It will vastly improve the neighborhood. Mr. Furze is in favor.

Mr. Kellogg: He is troubled. He understands now what they want to do. If you were to take the whole thing down including the foundation he would agree that it must conform. What they have really asked us to do is allow them to preserve the existing foundation.

They are asking us for a hardship to save on the cost of putting in a new foundation.

Mr. Kellogg is not sure how much you are going to save at the end of the day. If it were not for that he feels the house would have to be pushed back. Aesthetically it is much more pleasing than what is there. He thinks they are going to put more money into that foundation than they think and are not going to save anything. Mr. Kellogg votes against the application. He would ask that they push it back and make it conform.

Mayor Curtis: Mayor is in favor of the application mainly because of all the issues stated. We would not be here if they have not come across the health issue. Mayor is very much in favor in this town of people who build inside the existing footprint so there neighbors do not have any changes.

Ms. Wojcik: Passes on commenting on the application

Mr. Petrillo: In favor of the application. The area encroaching into the setback is not getting any larger. The area where they are building the second story does conform. We should not even be dealing with height because they are not asking for a height variance.

Ms. Barnes: Believes the mold qualifies as an exceptional circumstance here. The construction is a massive improvement to the neighborhood. The applicant has exhibited good faith in the entire process. The applicant has met the burden of proof. Ms. Barnes is in favor of the application.

Mr. Shore: Believes the mold is a special circumstance. The applicant is staying within an existing footprint. The part of the house that is in the setback is low. If it weren't for the mold they would not be here in the first place. Mr. Shore is in favor of the application.

Mr. Zabarsky confirmed with the Board that the conditions include using the existing foundation, removal of the underground oil tank, there will be a buffer provided on the eastern property line and must be approved by the zoning officer prior to the issuance of any permit.

There was a motion by Ms. Barnes and a second by Mr. Petrillo to approve the application with the conditions.

Mr. Shore polled the Board Members:

YEAHS: Shore, Furze, Curtis, Petrillo, Harrington, Barnes, Frizzell

NAYS: Kellogg, Tell

Mr. Zabarsky stated the vote is seven to two. The majority is five. The application with the conditions is granted and the memorialization will hopefully be adopted at the next regular meeting

New Business:

Mr. Zabarsky reviewed the status of the Ten Stary Dom Partnership v. T. Brent Mauro. **Mr. Zabarsky** stated at this point **Mr. Mauro** has requested that we do not move forward and act on the Appellate Division's decision because of the decision from the Supreme Court. **Mr. Mauro** does not want to lose any more money if the Supreme Court is going to take the case and hear it which means it can potentially change the decision of the Appellate Division. He would rather wait for that. His attorney put that in writing. **Mr. Zabarsky** thinks is alright to wait for the Supreme Court's decision.

Mr. Zabarsky stated that he feels there is a 1% chance the Supreme Court would hear the case.

Old Business:

Historic Preservation Ordinance

Mr. Shore wanted to review the reason why the Mayor had asked for this ordinance and why there are supporters of this. As everyone knows, Bay Head has a unique history and charm. The Mayor and the supporters of this type of ordinance are looking to preserve the charm, history and character of the town. We wanted to provide some protection to that. We do not want to become like other towns that have lost their history and their character. We have had some public discussion at the last meeting. We have received some input from some council members and from some other interested parties. After that public discussion and those meetings we are working on modifying the ordinance and kind of bring it back a little bit to the original intent of the Mayor and the committee.

We have heard and understand the concerns from the public, from some of the Board members and those the Council have raised. We are obviously going take all those opinions into consideration. Bay Head is not Nantucket. We are not looking to have a Nantucket ordinance here. We are looking for an ordinance to fit for Bay Head and our unique requirements. We met Monday evening. One thing they have already decided is that what you would consider to be a strong commission, which they would be able to make decisions by themselves, we are going to change it into an advisory or weak commission. We would make recommendations to the Planning Board and the Planning Board would have final say on any decision just as they do now for bulk variances and the like. We would also like to make the ordinance clearer and a little less overbearing. We have decided as part of the process, since we have a good starting point, to bring the revision process in-house. Mr. Kellogg and Mr. Furze have agreed to go over the ordinance with the notes that we have gotten from various people. We think that process will take 60-90 days. Mr. Shore encourages any Board members that have questions, concerns or comments to the way the ordinance is currently written, to forward those to Mr. Kellogg and Mr. Furze.

Mr. Shore wanted to speak a little about Mr. Gilman being quoted in the Ocean Star. Mr. Gilman was quite cogent. We do need to consider the comparison of the feasibility of tearing down a house as opposed to rehabbing a house. Mr. Shore's understanding is the way the state laws are written we can not build a financial consideration into the ordinance itself but we do need to weigh the difference between a teardown and the feasibility of rehabbing a house. We need to somehow work that into the ordinance as well. You are mistaking though, the ordinance is not going to stop someone from tearing down their house. At the end of the day, people have rights. There might be a process to go through before tearing down a historic house but you will obviously be able to tear down a house. The decision on whether a house is historic is not going to be based solely on the age of the house so a house fifty years or older is not going to be deemed historic on that basis.

We are planning on early summer having a presentation that is going to be educational in nature. We are not going to discuss the nuts and bolts of the ordinance. We are going to discuss the history of Bay Head and why we are trying to do what we are trying to do. We are going to follow that in the summer when all the part timers are back in town with at least two public meetings to discuss the nuts and bolts of the ordinance. That is where are at this point.

Ms Tell. Confirmed, for the record, that the committee met on Monday, not the Planning Board.

Mr. Shore opened the meeting for public discussion.

Mr. Nick Gilman, 810 Main Avenue, addressed the Board. Mr. Gilman stated, yes, the natives are restless. He stands before the Board as someone who has been restoring an old home since 1981. He happened to miss one meeting and they changed his zone. It was bizarre. He was told that he did not read the notice in the Observer. His comment was who reads the Observer. He stated you have to understand the physical nature of a building. He has lived here for sixty years.

Mr. King did the right thing. He said he was going to save that house. He did a beautiful job in a bad real estate market, sold it and moved on. We have to be careful about how we impose our ideas on somebody else. As somebody who works on old houses, he thinks they are going in the right direction. He wishes something could be done in the next few months because he feels we are going to lose a lot of homes that are for sale now on East Avenue.

Doreen Duggan, 40 Harris Street which is also 852 Main, addressed the Board. One of her concerns is the fifty year distinction.

Mr. Shore confirmed that the fifty year distinction will not come into play.

Ms. Duggan stated she is also concerned if you buy a historical home in Bay Head and you want to keep it historical you would still have to be able to make it livable for a year around home (e.g. if you wanted to add a bathroom).

Mr. Shore stated that the commission can serve an advisory roll to help you make those decisions.

Ms. Duggan stated that it would be better then having the commission dictate. The free advisory roll would be better then having to pay an architect to do all the work and come and have it turned down.

Ms. Wojcik, certified tax collector in the State of New Jersey, not being at the September meeting and reading the September minutes stated Ms. Tell has suggested that some type of relief should be given to people with tear downs as opposed to renovations like real estate taxes. You can not do that. No matter what commission you form. It has to be statutory. The only statutory ones are veterans and senior citizens and so forth.

Mr. Tom Charlton, 18 Harris addressed the Board. He posed the question, how do people know what is going on? How do people communicate to the Board our concerns? He had tried to get a copy of the draft. At first, he was told it was not available. Afterwards, we found out it was available at the town hall. The first thing that needs to be done is to make sure people know what is in the ordinance and what it is all about.

Mr. Shore stated that the ordinance is in a working mode right now. There will be changes made to the ordinance. In terms of voicing your questions or concerns, Mr. Shore stated to please feel free to contact any of the Board members or the members of the committee. Mr. Shore stated that he is always available.

Mr. Charlton would like to see the drafts and the changes posted on the Bay Head website.

Mr. Kellogg stated if it going from a hard commission to a soft commission and if it going to be advisory, most of what is in the last ordinance draft will be irrelevant. We are going to use what we have as a starting point. If ten percent of it survives the next draft it will be a lot. So anything out there now is really misinformation.

Mr. Charlton asked if there is a financial cost to revise that draft and how much would it be?

Mr. Kellogg stated they will be doing the revision in house so there will be no additional cost for that.

Mr. Shore stated there will be costs incurred along the way. It will still be reviewed by an attorney.

Mr. Shore confirmed with Mr. Charlton that they have, to date, incurred about \$6,000.00 in costs for the outside consultant to draft the original part of the ordinance. Mr. Shore confirmed there is a budget.

Mr. Charlton stated that there are rumors going around that anywhere from \$20,000.00 - \$40,000.00 has been spent.

Mr. McGoey, 50 Harris Street, addressed the Board. Please just make sure when there is a working copy of the ordinance that it is made available.

Virginia Donnelly, 736 East Avenue, addressed the Board. Ms. Donnelly requested that a letter be sent confirming there is an updated draft of the ordinance. Not everyone receives the local newspaper.

Mayor Curtis confirmed that letters will be sent out to the tax payers when they are comfortable with the revised form of the ordinance.

Mr. Rich Donnelly, 736 East Avenue, addressed the Board. Mr. Donnelly is very concerned about another layer, another panel to oversee. He is also concerned about the property rights that will be infringed upon. He had received something from an attorney concerning an attorney review that the property in question is not in a historical ordinance town. That is just something to think about.

Mrs. Charlton, 18 Harris Street, addressed the Board. Mrs. Charlton stated that she did read the document. She is concerned about the level of intrusion in the terms of decision making on the part of a homeowner. It will take time and money if you are trying to conform. She requested as they go back through this to consider the level of convenience and the time constraints involved.

Mr. Stan Niedzwiecki, 42 Johnson, addressed the Board. Mr. Niedzwiecki hopes that the rights of people will not get trampled on. He is wondering how this whole historic thing got out of hand. He is not interested in what the historical preservation ordinance committee wants to do. He does want anything done to his house. I don't want any supervision by them. He wants to make sure he got on record.

Mr. Shore stated that Ms. Wintersteen is correct about the listing Mr. Gilman is referring to back in 2005.

Ms. Wintersteen stated to Mr. Gilman that one of the jobs of that committee is to make the list. That committee has not been formed yet. That list is not the list yet. People should not get alarmed about this list until the commission is formed. The commission will make the list. If you are on this list it does not mean the newly formed commission will have your house on this list.

Mr. Gilman stated that the ones on record should be the ones we should consider.

Mr. Shore closed public comment.

There was a motion made by Mr. Petrillo, seconded by Ms. Barnes to pay the following vouchers:

Maser/Meeting, Public Attendance	148.00
Maser/41 Johnson Street	296.00

There being no further business the meeting was adjourned.

Respectfully Submitted,

**Laura Tuzzolino
Board Clerk**

