

The meeting of the Bay Head Planning Board was held on Wednesday, August 15, 2012 at 7:30 p.m.

Mr. Furze 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: William Furze, David Kellogg, Verity Frizzell, Kathleen Tell, Mayor Curtis, Bart Petrillo, Brian Magory, Peter Harrington, Patricia Wojcik, Edward Convey, Kathleen Wintersteen, Fred Applegate

Absent: William Tubbs

Engineer – Susan Brasefield

Attorney – Steven Zabarsky, Esq.

The July 18, 2012 minutes were approved on a motion by Mr. Convey, seconded by Mr. Petrillo with all in favor.

Roll Call:

YEAHS: Kellogg, Mayor Curtis, Petrillo, Magory, Harrington, Wojcik, Convey, Wintersteen, Applegate

NAYS: None

Mr. Furze stated the Board had for review the Resolution of Mr. & Mrs. Craig Chobor, 28 Karge, Bay Head, NJ a/k/a Block 33.01, Lot 11 which was approved at the meeting of July 18, 2012.

Mr. Petrillo motioned, seconded by Mr. Magory that the Resolution be approved and passed on a roll call vote as follows:

YEAHS: Kellogg, Mayor Curtis, Petrillo, Magory, Harrington, Wojcik, Convey, Wintersteen

NAYS: None

Mr. Furze stated the Board had for review the continuation of Mr. Jonathon C. Younghans’ application, 524 Lake Ave., Bay Head, NJ a/k/a Block 53, Lots 1 and 2.

Mayor Curtis, Mr. Magory, Mr. Kellogg and Ms. Tell recused themselves from hearing the application.

Mr. Younghans stated that he is back again after listening to the Board’s comments. The comments were very helpful. They have listened to the Board’s concerns and the Engineer’s concerns. He thinks he has come up with something that is more easily acceptable with less, red flags.

The following were marked into evidence:

A-12 List of Variances based on the current plan for 524 Lake Ave., submitted July 31, 2012
A-13 Plans titled, “Proposed Additions and Alterations, Applegate’s, 524 Lake Avenue,” consisting of seven (7) sheets, prepared by William J. Taylor, and Joseph A. Gallagher, dated July 29, 2012

A-14 A Site Plan titled, “Proposed Additions and Alterations, Site Plan and Maps, Photos, Schedule, Signatures, Applegate’s, 524 Lake Avenue,” prepared by William J. Taylor, dated July 31, 2012.

A-15 Review letter from the Planning Board Engineer, dated August 6, 2012.

A-16 Proof of Service

A-17 Proof of Publication

Mr. Zabarsky stated that both Mr. Furze and Ms. Frizzell were absent at last months’ meeting held on July 18, 2012. They are present tonight. Each has certified that they have listened to the entire tape recording of the hearing. He will mark the certifications as board exhibits.

B-1 Certification from Mr. Furze that he has listened to the entire tape recording, under the statute, of the meeting of July 18, 2012.

B-2 Certification from Ms. Frizzell that she has listened to the entire tape recording, under the statute, of the meeting of July 18, 2012.

Mr. Zabarsky stated both Ms. Frizzell and Mr. Furze will be eligible to participate and vote if this matter comes to a conclusion as well as the balance of the members present on the dais. The members that left had previously given their reasons why they must be recused except for Ms. Tell, who is a member of the Bay Head Yacht Club. That leaves us with eight members. Mr. Younghans will need six affirmative votes out of the eight members present because he is seeking a use variance, under the statute.

Mr. Younghans was sworn in by Mr. Zabarsky.

Mr. Younghans stated that they have made a lot of changes. These changes include removing the tower that was above the height that was for the elevator. They have removed a deck from the south side. We lessened, bought into conformity, the third floor roof top deck space. That will all be explained in testimony as we go through the drawings.

Katharine Bogle, degree in architectural engineering from Penn State University with an MBA after that, was sworn in by Mr. Zabarsky.

Ms. Bogle stated she had worked with the Younghans’ family in developing a program, a floor plan and elevations that work with the community.

The following was marked into evidence:

A-18 Poster board of before pictures and after renderings.

Ms. Bogle stated that the drawing is of Applegate’s Hardware. Currently the building has a flat façade. It does not have the same shingle style feel that we currently have in majority of the town. Their goal is to give it some character of a shingle style and have it more conforming to the setbacks. The center section has been pushed back so it is in the setback. On the backside of the building they are keeping the gabled area the same.

The following was marked into evidence:

A-19 Elevation drawings with an overlay

Ms. Bogle reviewed the east, south, west and north elevations. The locations of the balconies were reviewed and discussed.

Ms. Bogle stated the overhangs on the north side will be removed. There will be no change. They will leave it as it is.

Ms. Bogle confirmed with Ms. Wojcik that the elevator shaft is still there and it will be under the 35 feet.

Ms. Bogle mentioned there is the third floor deck that will be under the 75 square feet.

Mr. Petrillo stated that he has an objection to the roof deck. It is an open roof deck. You would need a variance for that. It must be under a roofline not on top of the roof.

Mr. Younghans stated that this was their misunderstanding. They worked hard to get it down to what you were looking for. They reduced it. It is the only place to put a grill and it is totally hidden from everyone.

Mr. Zabarsky stated he would like to be clear. They are asking for numerous bulk variances and use variances. The Board, as long as he has been here, fourteen years now, has never approved a rooftop deck ever, under any circumstances, when variances are being asked for. This is a residential area and there is aesthetics.

Mr. Zabarsky does not know of any rooftop decks that exist in the town and rooftop decks have never approved by the Board in his tenure.

Ms. Frizzell stated that it is really hard to tell from the pictures what is going on at that part of the building. It would helpful to see where the rooflines line up around this deck. The parapet wall would be about 4 feet, 9 inches above the floor of the deck. Ms. Frizzell commented that you could see someone's head above that wall.

Mr. Younghans stated that his whole team then misunderstood. They could have put a huge bulbous sunroom there. That would have been permitted.

Mr. Zabarsky stated that it may have been permitted but with all the bulk variances and use variances that are being requested, all because that is so called, permitted, may not be acceptable to the Board under the negative criteria.

Ms. Bogle stated that this deck is set really far back from the road.

Mr. William H. Hamilton, licensed Planner in the State of New Jersey, was sworn in by Mr. Zabarsky.

Mr. Zabarsky confirmed to Mr. Hamilton that he would like Mr. Hamilton to go through each item on the Planning Board Engineer's review letter.

Mr. Hamilton stated he would like to address the parking area because there has been a change in that as a result of another item in the Engineer's letter. They have an exhibit that they have prepared.

The following was marked into evidence:

A-20 For ID Only. It is entitled “Proposed Addition and Alterations by the Taylor Engineering Company, Sheet C-3, dated August 15, 2012

Mr. Hamilton stated he does not have copies for the Board he had just brought it as an exhibit.

Mr. Hamilton stated what they propose here, based on the concerns of the Engineer, is the elimination of one of the commercial parking spaces. By doing that it allowed them to have direct access for the residential units, a straight driveway, clear back up space onto Mount St. and separation of the wall between the driveway and the handicapped space. They felt it was a safer condition and a better alternative. They have modified that one aspect of the plan.

Mr. William Taylor, Professional Engineer, was sworn in by Mr. Zabarsky.

Ms. Brasfield stated the proposed garage has elevations that range from 2.24 ft. to 3.15 ft. because they are raising the grade.

Both Mr. Furze and Ms. Frizzell asked why they were raising the grade?

Mr. Younghans stated they are raising the grade because of the flooding. These garages flood like crazy. If you are not at a reasonable elevation you can lose a car. The bicycles get trashed. This street end floods all the time. It is one of the lowest street ends in Bay Head.

Mr. Furze asked Mr. Taylor if there was a crawl space and where is the crawl space floor in reference to those flood vents.

Ms. Frizzell stated the elevation is 1.9 on the survey.

Mr. Taylor stated the entire building is going to be upgraded to FEMA. They have to raise all the floors six inches.

Mr. Taylor confirmed to Mr. Furze that the finished floor will be at the elevation of 5.00.

Ms. Frizzell stated that based on the survey it looks like the bulkhead is inside the property line by about one foot, so that the property line is actually over the water. Usually the property over the water is not included in lot coverage because you can't build on it. It is not land. You have lost about 120 sq. ft. because of that.

Mr. Zabarsky stated Ms. Frizzell is correct. The definitions are clear. The measurements are from the bulkhead.

Ms. Frizzell asked the applicant, when they are doing their lot area calculations are they doing the calculations to the property line or to the bulkhead?

Mr. Zabarsky stated new calculations are needed for building coverage, lot coverage, lot area and setbacks. It adds more to the percentage or more to the request for variance.

Ms. Frizzell stated to Mr. Hamilton that pertaining to item #7. on page four of the review letter, anything above a foot is building coverage so all the shaded areas in the exhibit Plan

Sheet 52, for the decks and the stairs, landings and the ramp, above one foot are building coverage not structure coverage.

Mr. Hamilton agreed.

Mr. Hamilton confirmed to Ms. Wintersteen that there will be commercial parking both on the street and in the parking lot on the other side of the bridge.

Mr. Hamilton confirmed to Mr. Zabarsky that the residential parking spaces will be marked that they are reserved for the residents.

Mr. Hamilton addressed item 20, page 6. of the Planning Board Engineer's review letter. The trash enclosure will be placed on a concrete pad. They will agree to provide the documentation to confirm that the trash enclosure does not need a wetlands or CAFRA permit should the Board act favorably on the application as a condition of approval. There are not many places on the site for placement of the enclosure. This is a spot that is out of the way, not conspicuous and was most appropriate for the use.

Mr. Younghans stated to Mr. Furze that currently the garbage is inside the building. The garbage cans are brought out to the curb twice a week and left out front on the curb.

Mr. Hamilton reviewed the Variance List, submitted as evidence A-12:
The deck above the second story cannot be roofed. As the Board had heard testimony from the architect, a deck on the east side of the building had been proposed with a roof. If it is to the Board's discretion, that element can be removed from the project. The decks located on the east side do not comply with the ten foot setback requirement therefore, a variance is needed. They read the ordinance on third floor decks. They feel they comply. However, they are not here to argue about that. If the Board feels the intent of the ordinance is not to have a deck on the roof then they will certainly address that in revised plans.

Mr. Younghans stated to Mr. Furze that the brick wall to the north is the owner's wall. It is over the line for a house that was built in the 60's.

Mr. Hamilton stated the variance for the eaves on the side rear and front yard setbacks may change slightly with the bulkhead determination.

Mr. Hamilton stated the impervious coverage has increased from 75% to 82% because of the stairs, the decks, providing access to the back of the building and for ADA accessibility.

Mr. Hamilton confirmed that no onsite loading is proposed in this application. They have never had loading in the past at this site. They always load from the front of the building. They do not anticipate that is going to change in this application. There is very little room on the site to provide a loading space.

Ms. Frizzell asked if the steps on the southwest corner of the building could be relocated to the south of the sidewalk instead of encroaching in the side yard setback?

Mr. Younghans agreed that was a great idea.

Mr. Hamilton reviewed the D(1) Variances:

The upgrade will bring this building up to modern standards. The building will have new electrical systems, new fire alarms, fire suppression systems and will meet the building codes. An ADA space was added which does not exist today. The building is going to be better in keeping with the character of the neighborhood. By moving the second floor back from Lake Ave. it is a real improvement in the streetscape. This site is suited for its use. It has been a commercial use for many years as a hardware store. The building is under utilized right now. Second floor apartments are permitted and third floor apartments. They are proposing two instead of one. They are not going to change the building facades in terms of the locations of the walls. They are not changing the façade at all on the northern side. The second apartment is going to fit within the footprint of the existing building. The second apartment is not going to be noticeable to the public. In their opinion, there is no negative detriment for the granting of this variance. There is going to be no impact to the neighborhood, especially to the neighbor to the north. Most of the C Variances discussed are minor in nature. In reviewing the June 6, 2007 Master Plan Reexamination report one of the goals is to maintain the character of the commercial districts. They are advancing that goal. Another goal in the Master Plan is that businesses use commercial parking lots. They are going to do that with this application. The site is very convenient to the commercial lot on the other side of Scow Ditch. The applicant has been very conscious of what this property is going to look like in terms of the architecture and the development of the property.

Mr. Hamilton reviewed the C Variances:

They include minor changes to a number of nonconforming conditions relating to setbacks, and such. The change in building and lot coverage is not significant although it has to be addressed in some revised numbers. It is mostly in regard to providing access to the building, stairways in the back of the building and the ADA handicapped ramps. There is no extension of the structure itself. With the uncovered steps, they have removed a variance. The fence in the front yard is necessary to provide a screen for the garbage recycling area. The addition on the second floor that was going to be roofed was an architectural element. They feel it is appropriate. The Board has expressed some other concerns. Again, the applicant has provided the opinion that if the Board is not comfortable with it they could come up with some sort of alternative to provide some architectural interest instead of the deck in that area.

Mr. Hamilton stated they are looking for both C(1) and C(2) variance relief. The C(1) relief is because of the hardship that is imposed on the applicant with regard to the existing structure they want to maintain. Any improvements they want to do all require variances. It is a hardship when you want to keep an existing structure. There is also C(2) variance relief. We are promoting general welfare and safety. Access to the buildings is necessary for the function of the building and to meet codes such as the ADA requirement. Outdoor areas are important to residential use. It is also important to promote a positive visual environment. Decks work with the architecture we pointed out. The building design is a tremendous improvement over the existing condition and we feel it is in keeping with the neighborhood character and an improvement to the neighborhood overall. There is going to be no substantial detriment to the public good with the granting of these variances. The bulk relief is relatively minor in nature. The garbage is contained with an attractive fence that is an appropriate location of the site within the front yard of the property. Finally, there is no substantial detriment to the zone plan and zoning ordinance. Again, these C variances are minor in nature.

Mr. Furze stated that the applicant should pay attention to how the depressed curbs line up on the corners.

Mr. Furze requested that the applicant's architect deals with the front door. It is in swinging right now. The occupancy load makes a difference. If the door does have to swing out then the ramp will not work.

Mr. Younghans stated that they will adhere to all the building requirements.

Mr. Joseph A. Gallagher, New Jersey licensed architect, was sworn in by Mr. Zabarsky.

Mr. Gallagher stated if the occupancy load becomes over 50, he thinks they could push that door into the building, they could recess it in. So they would have enough of a landing.

Mr. Younghans confirmed to Ms. Frizzell that when they raise the floors six inches, the windows are going to stay where they are.

Ms. Frizzell stated the windows on Lake Ave. would be at the floor level.

Mr. Younghans stated he will check that out.

Mr. Furze opened the meeting for public discussion.

Mr. Mark Durham, 520 Lake Ave., was sworn in by Mr. Zabarsky. Mr. Durham stated he is the neighbor to the north and is in favor of the application. He and his wife are in favor of the plans for development. Mr. Younghans has been proactive and forthcoming in bringing them information pertaining to the project. It is very important to them to maintain their privacy of their deck and maintaining the space overlooking their property as storage space. He has a question about the East elevation. It slopes to the right or to the north. What is that? It does not currently exist. Mr. Durham has a question about the western elevation, particularly with the stairs and the second floor deck. Does the deck project further out then the western plane of the wall there?

Mr. Younghans confirmed that this is part of the variances. It is a coverage issue.

Mr. Younghans confirmed to Mr. Durham that the mechanical equipment on the rooftop are five condenser units. They are the quiet residential ones like the ones that are on the ground now.

Mr. Durham stated that their brick wall was built for aesthetics. It was better then looking at the stucco, north wall of the Applegate's store. It is at a height of just under ten feet.

Mr. Durham is concerned about the time of construction. There is a very narrow margin to provide access for construction.

Ms. Frizzell stated that is actually covered by a statute and Uniform Construction Code that the contractor has to get permission for access from you for your site and repair any damage they cause. The contractor has to come with a protection plan.

There being no further public comment, Mr. Furze polled the Board members:

Mr. Applegate: Mr. Applegate has concerns about the third floor deck. Mr. Younghans said he would like to grill out there. Being Fire Chief, he can see false alarms going from seeing smoke coming from over the parapet wall.

Ms. Frizzell: Ms. Frizzell is especially concerned after seeing exhibit A-20 that the number of parking spaces for the public is one. There used to be five. It just seems counterintuitive that they are adding two retail spaces and taking away parking spaces. She had her piece about the deck on the second floor. She thinks there is another way of handling that without it being a balcony on the front. We have talked about ways to improve the setbacks that she thinks are beneficial for the project moving forward. She thinks they are really, really close to getting something that she can put her arms around and be in favor of.

Ms. Wintersteen: The fact that this is a family endeavor the two units are not particularly separated on the second floor. Ms. Wintersteen is also concerned about the rooftop deck. The space on the drawing does not look appealing to her. It is a rooftop deck which is not allowed by code. It is next to all that equipment that is going to be going on and off. She does not see what it adds to their layout. Ms. Wintersteen is very much in favor of everything they have done. She thinks the building is lovely and she wishes the applicant success with it. She would be concerned about separating the units so they are two real units and that rooftop deck.

Mr. Convey: He thinks they have tried very hard to work with the Board so he would like to acknowledge that upfront. He is also concerned about the rooftop deck. The covered balcony on the eastern elevation, he has no problem with that. Mr. Convey does have a problem with the trash area. That particular path has a very high amount of foot traffic. To have a garbage facility right out front ..., he just wishes there was another way. If there is anyway to put that behind the building he would like the applicant to at least think about it.

Ms. Wojcik: She does appreciate everything they have done to work with the Board. She does not think that third story deck should remain there, uncovered. It is against our ordinances. She would not go for it. Everything else she thinks they worked very hard on and it is a beautiful building.

Mr. Harrington: He thinks it is very close. He does not see where there is much benefit from the third floor deck. Otherwise, the plans are very well done. Generally, he is very in much in favor of how things have developed up until this point.

Mr. Petrillo: Overall, he likes the plan. It is a great improvement. However, his concern is the roof top deck. As far as he is concerned it is a rooftop deck. Other than that he thinks it is fine.

Mr. Furze: His issue right now is he wants to make sure our Board members, if they are willing to vote in favor of this application, can articulate their concerns without having to bring the applicant back next month. He is generally in favor, he was from the very beginning.

Mr. Zabarsky stated that if any of the Board members are not for example in favor of the rooftop deck, then you can suggest to Mr. Younghans' that the Board will approve the application but without the rooftop deck. It means modifying the plans and seeing it again. Overall it does seem like you are asking the applicant to consider revising the plan that is presented with these changes as being suggested by the Board. The Board may want to look upon those changes, see them. There have to be recalculations of the numbers based upon the fact that the calculation on those four matters were done to the property line as opposed to the bulkhead. They may be minor but they have to be redone. Then the Board may be in a better position to say, now that these things have been done, they can vote on the application. The alternative is you approve it with the following changes. The problem with that is the changes need to be specific. Mr. Younghans then has a decision to make.

He can choose to have the Board vote on the application as presented tonight, here is what it looks like, here is the request, here are the variances, the calculations are a little off but would like the variances for this, the recalculations will be submitted but would like the Board to vote on this application. The Board will then vote yes or no on the application. The other option is for the Board request for Mr. Younhans to come back next month with the revised plans as he heard it and get an approval on the amended plan.

Mr. Furze reopened the public session.

Joann McAleavey, 541 Lake Avenue, was sworn in by Mr. Zabarsky.

Ms. McAleavey is so impressed with the Boards' expertise on everything. She would be so sympathetic to the Younghans if they can not have that outdoor space. We live with a view of the bay. To deny him that magnificent view would be a crime.

The Planning Board Members and Mr. Zabarsky stated that there are other decks to get outside. The second floor deck already faces the water.

Mr. Furze closed the public session.

Mr. Younhans stated he is prepared to move forward. He would like to remove the request for the third floor deck. There are a few tweaks, the front door and the steps going into the backyard. He would like to move forward with a vote tonight because he does not know if he has it in him to go another month because of the amount of energy, time money and the uncertainty of another month. Another month gets them right into Mark's backyard next summer building instead of doing it this winter. He would like to get going as soon as possible for the Applegate's and the whole neighborhood's sake. He would respectfully like to move forward with a vote. They have come up with their best and final application before this Board.

Mr. Zabarsky stated that there has to be another architectural plan submitted to show the elimination of that deck. The Board needs to approve a plan.

Mr. Petrillo stated the Board needs to know what they are approving. We do not know what we are approving so how can they approve it. If you are removing the deck, then what are you going to put there?

Mr. Hamilton suggested the Board potentially vote on the D-1 variance tonight so Mr. Younghans would have some satisfaction and at the same time authorize your attorney to draft the resolution so at the next meeting he can get his approval, he could provide the plans and the resolution could be memorialized. He would then not lose any time in terms of his construction.

Mr. Zabarsky highly recommended that the Board does not break up the application by voting on the variance tonight subject to an approval of the building with the appropriate C variances. If the Board so desires he can draft generally the resolution. The statute allows us forty five days to draft the memorializing resolution of the action of the Board. Mr. Zabarsky stated he could draft the resolution in advance that covers most of the stuff we talked about, obviously leaving some portions blank, obviously there is some room for modification. So when the Board votes next time, if the Board is so inclined to approve the application likewise the resolution is already done and being approved so there is not

another month time limit. For a memorializing resolution he has no problem with that. The Board has the authority to do that. The resolution in basic form would be done from what he heard. Any changes could be made by computer by Ms. Tuzzolino so there is no time lag on the memorialization. It will be done that night. If the Board so desires to approve it, the resolution will be done and that will be the end of it.

Mr. Furze stated it seems like a reasonable compromise.

Mr. Zabarsky stated the conditions are the elimination of third floor deck and to show what that is going to look like, the stairs on the back southwest corner, the one front entrance about the ramp and the door whether it is going to be recessed or not and the recalculations on lot coverage, setbacks, lot area and building coverage. That is based on the bulkhead measuring line.

Mr. Zabarsky stated Mr. Younghans can bring back any witnesses he wants or not bring back any witnesses. The Board can not tell him who to bring back or not to bring back.

Mr. Zabarsky stated there will be a new set of architectural plans and they can see what it looks like. He will prepare a resolution so it will not be done by memorialization. It will be done by action that night with resolution. There is no re-notification needed. We would like the plans ten days before.

Then if that is acceptable, Mr. Zabarsky stated we need a motion and a second to carry this. The next regular meeting is scheduled for September 19th.

Ms. Wojcik stated she will not be here for the September 19th meeting. Ms. Wojcik stated to Mr. Zabarsky that she could probably phone in. She is in Atlantic City at a conference. She has never phoned in before but she guesses she probably could.

There was a motion by Ms. Wintersteen seconded by Mr. Harrington to carry this application to the next meeting.

Roll Call:

YEAHS: Furze, Frizzell, Petrillo, Harrington, Wojcik, Convey, Wintersteen, Applegate

NAYS: None

Mr. Zabarsky stated action will be taken at the next regular meeting of September 19, 2012 and Mr. Zabarsky will have the resolution so the applicant will not have to wait for memorialization.

There being no vouchers to approve, the meeting was adjourned.

Respectfully Submitted,

**Laura Tuzzolino
Board Clerk**

