

The meeting of the Bay Head Planning Board was held on Wednesday, February 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, Kathleen Tell, Verity Frizzell, Brian Magory, Patricia Wojcik, Edward Convey, Kathleen Wintersteen, Fred Applegate, Mayor Curtis, Bart Petrillo

Absent: Peter Harrington

Engineer – Susan Brasefield

Attorney – Steven Zabarsky, Esq.

The January 18, 2012 minutes were approved on a motion by Ms. Frizzell, seconded by Mr. Convey with all in favor.

Roll Call:

YEAHS: Furze, Kellogg, Frizzell, Tell, Mayor Curtis, Petrillo, Magory, Wojcik, Convey, Wintersteen, Applegate

NAYS: None

Mr. Furze stated the Board had for review the application of the Ms. Dana K. Loft, 447 Club Drive, Bay Head, NJ a/k/a Block 49, Lot 4.

Mr. Applegate recused himself from the application. He lives within 200 feet of the property located at 447 Club Drive.

Mr. Koutsomitis, Koutsomitis Architects P.C., stated he would be representing the applicant and was sworn in by Mr. Zabarsky.

Mr. Koutsomitis stated that 447 Club Drive is an existing residence. It is a single story building with a gabled roof. They propose to add a second floor and raise the gable roof. The current north yard is 5.77 feet away from the property line. The required minimum is 6 feet. The difference is 0.23 feet (2-3/4”). They would like the variance to build up on top of the same wall to the second story. The proposed building expansion, the second floor, will not go beyond the existing footprint. There would be stairs that takes you up to the second floor. There will be three bedrooms, each with its own closet and two bathrooms. Above that is an attic. The space in the attic that is above five feet is less than 46 square feet. It is not a third floor.

Mr. Koutsomitis confirmed to Ms. Tell that they would only be building on the back side of the house and the whole addition will be 20 feet off of Club Drive.

Mr. Koutsomitis confirmed to Ms. Frizzell that the existing shed will not be raised and that there are no issues with the flood elevation.

Mr. Kellogg stated after relocating the first floor entrance the parking space will be undersized for the two parking spaces required by the zoning rules. The spaces have to be

9 feet by 18 feet each. They would have to seek a variance for parking. The south side fence would have to be removed.

Ms. Frizzell stated that the retaining walls appear to be timber and they could be removed.

Mr. Furze stated that they do not need a variance, they would just have to do a little work.

Mr. Koutsomitis would like to ask for the variance. What we have done here is actually take a condition that is worse right now because the stairs are in the front and we have moved them towards the back. So we are trying to accommodate the situation with the two cars. It is not the length that is the issue it is the width that is the issue in this particular case.

Mr. Zabarsky stated that the parking variance is covered in the Affidavit of Publication. It requests approval of necessary variances pursuant to the plans on file. If it turns out that there is another variance, in this case parking, then that is ok.

Mr. Zabarsky cautioned the Board the variance can not just be for parking. State the variance exactly. At a minimum specify the dimensions.

Mr. Zabarsky marked into evidence A-9, a lot coverage plan submitted by Mr. Koutsomitis.

Mr. Magory stated there are two variances we are dealing with here. One is for the side yard setback. The other is for one parking space.

Mr. Furze opened the meeting for public discussion.

There being no public comment, Mr. Furze closed the public session.

A motion was made by Mr. Magory, seconded by Mr. Petrillo that the application be approved with the amended one parking stall on site.

Roll Call:

YEAHS: Furze, Kellogg, Frizzell, Curtis, Petrillo, Magory, Wojcik, Convey

NAYS: Tell

Mr. Zabarsky stated it is a vote 8 to 1 in favor of the variance requested, as amended, is granted. The memorializing resolution will be adopted at the next regular meeting.

Mr. Furze stated the Board had for review the application of the James and Barbara Liati, 210 Lake Avenue, Bay Head, NJ a/k/a Block 24, Lot 12.

Ms. Frizzell recused herself from the application. Ms. Frizzell prepared the architectural plans for this application.

Mr. Gage addressed the Board. His Planner has been detained in Pt. Pleasant at the moment. He sees from the agenda there is an ordinance to be reviewed this evening. He asked if the Board would be so kind as to review the ordinance issue first.

Mr. Furze stated at Mr. Gage's request the Board will review the ordinance first.

Mayor Curtis stated that last Monday night he had appointed Mr. William Tubbs as the new Planning Board Alternate. He has accepted and will be joining us at the next month's meeting. We will then be back to a full compliment of four alternates and nine regular members.

Mr. Furze stated that the Board had received proposed amendments to our Land Use Ordinance. There are three items.

Mr. Magory stated that we are going through ordinance reviews because some ordinances in Bay Head go back many years. We have had subsequent ordinances that have impact on certain other ordinances. We are trying to make corrections where these do occur, when necessary. In this particular ordinance there are three elements. One being hedges. When they are in the front of the property they can be no higher than three feet. This is in effect as of January 1, 2012. Everything prior to that is grandfathered. The second piece is the impervious coverage on the lot. It used be 35%. It has been changed to 50%. When it was 35%, swimming pools were allowed to be a part of that coverage and you were able to build up to 45%. So it makes no sense to penalize someone that was getting an advantage before. They are also being moved to the 50%. The last piece of this is we try to encourage businesses here in town. The realtors had come to us stating that they need some directional signs here on both Saturday and Sunday to be able to direct people to properties that are being offered for sale. We have provided in this ordinance that you can put a sign out on either Saturday or Sunday. It must be removed by sundown. It is only on the main streets. Those are the three elements of the ordinance.

The Board reviewed Ordinance 2012-01 entitled "AN ORDINANCE OF THE BOROUGH OF BAY HEAD, COUNTY OF OCEAN, STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING THE MUNICIPAL CODE OF THE BOROUGH OF BAY HEAD, SO AS TO AMEND CHAPTER 147, ENTITLED "LAND USE" and had the following recommendation:

The motion was made by Ms. Frizzell and seconded by Mr. Convey to approve the Ordinance with the following revisions:

Section 1. (1) The proposed modification should read:

"Fences, walls or other manmade obstructions shall not exceed three feet in height above ground level within the area bounded by the street line and the required setback line from the street..."

It was proposed the following be deleted: "nor shall any obstruction to vision other than a post or tree not exceeding one square foot in cross-section area exceed three feet in height above the ground level"

Section 1. (2) The Planning Board proposed this be deleted.

Section 2. A(1) The proposed modification should read, "Except as otherwise provided in this section, swimming pools shall be located behind the front building setback line and behind the front of the principal building and shall not infringe upon the required minimum accessory building setback line."

Section 3., A(2) It was proposed "such as" be removed.

Mayor Curtis and Mr. Magory recused themselves from the vote.

Roll Call:

YEAHS: Furze, Kellogg, Frizzell, Tell, Petrillo, Wojcik, Convey, Wintersteen, Applegate

NAYS: None

Mr. Zabarsky stated that this will be the report that goes back to the Governing Body in regards to the ordinance reviewed by the Planning Board.

Mr. Furze stated the Board had for review the application of the James and Barbara Liati, 210 Lake Avenue, Bay Head, NJ a/k/a Block 24, Lot 12.

Ms. Frizzell recused herself from the application. Ms. Frizzell submitted the architectural plans for this application.

Mr. William Gage stated he would be representing the applicants. They wish to demolish the area between the main portion of the house and the garage, or as he calls it, the corridor. This has been bought about by flood damage that has occurred to the property. The property has a few non-conforming conditions:

A front yard setback of 9.1 feet where 20 feet is required;

A west side yard setback of 0.3 feet where 6 feet is required;

A north side yard setback of 0.9 feet where 10 feet is required;

Building coverage of 44.3% where 35% is the maximum permitted;

Lot coverage of 58.5% where 50% is the maximum permitted.

These are all preexisting. Some of them will be decreased.

Mr. Gage stated that after filing the application he did find out from the tax collectors office this is a two family home. This is a preexisting, non-conforming use. As part of this application his client would be willing to vacate their rights to a two family use upon the property.

Mr. Gage, as part of the application, is also asking for a waiver for a new survey. The survey does depict the property as it currently exists.

Mr. Burdick had just brought to Mr. Gage's attention that he has drawn up a new survey if the Board does not feel the waiver is appropriate.

Mr. Zabarsky stated before we mark anything into evidence he wanted to cover that the Board had received two letters, one was physical and one was by e-mail, from people who had interest in this matter. He instructed, for the record, Ms. Tuzzolino to contact the individuals to advise them that their letters would not be considered as part of the application. Submission of letters, are not admissible for consideration by a Zoning or Planning Board because it does not provide the opportunity for the applicant, general public or the Board to cross exam the testimony that is offered. The individual's who wrote the letters, if they wanted to be heard, would have to come in person to testify or to seek counsel to appear. Mr. Zabarsky asked the Board not to review or consider the letters for the purpose of this hearing. They are in the file but they are not being marked into evidence.

The following were marked into evidence:

- A-1 Application, dated January 14, 2012
- A-2 Survey prepared by Elbert Morris, dated May 12, 2003
- A-3 Architectural Plans titled "Proposed Residence for James and Barbara Liati", prepared by Feltz and Frizzell Architects, dated December 22, 2011, consisting of (2) sheets
- A-4 Denial Letter from Zoning Officer Bart Petrillo, dated January 26, 2012
- A-5 Three (3) photos of the inside of the dwelling
- A-6 A copy of an agreement dated October 1968 regarding the encroachment of the roof overhang, curb, wall and runoff from the roof
- A-7 Letter dated February 1, 2012 requesting a waiver for an updated Survey
- A-8 Plot Plan, prepared by R.C. Burdick, dated January 31, 2012
- A-9 Letter from the Planning Board Engineer, dated February 2, 2012 deeming the application complete.
- A-10 Review letter from the Planning Board Engineer, dated February 13, 2012
- A-11 Proof of Service
- A-12 Proof of Publication
- A-13 Photo of 210 Lake Avenue

Mrs. Liati was sworn in by Mr. Zabarsky.

Mrs. Liati stated she has owned the property since 2003. They have had a lot of flooding through the years. Hurricane Irene practically destroyed that mid section. The FEMA representative told her that they could not move anything back in there because it is toxic. That is when they knew they had to correct the problem by raising that part of the house so it does not flood any longer. Mrs. Liati explained that the photos marked as A-5 shows the damage inside her home. These depict the water line damage and mold damage.

Mr. Gage confirmed with Mrs. Liati that they are willing to vacate and surrender the two family use.

Mr. Gage confirmed with Mrs. Liati that the survey submitted with the application is in fact her property and accurately depicts the current parameters of the property and where the structure is located on the property. There have been no additions or changes.

Mr. Furze stated that the grade seems to be about five feet below the garage head. He can not see how the structure is going to count as a garage. The driveway does not seem long enough to hold two cars. Why is the applicant not requesting a variance for the parking?

Mrs. Liati stated to Ms. Wojcik that she parks in the driveway and guests park in the street.

Ms. Tell stated she had pulled into the driveway today and her car was hanging out over the curb.

Mr. Robert Burdick, Professional Engineer and Professional Planner, was sworn in by Mr. Zabarsky.

Mr. Burdick stated from the scale of the architectural drawings it seems that the garage doors are about 5-1/2 feet tall. The purpose of this application is to raise part of the home so the flooding issue is lessened. His firm did do an updated survey. This is a very uniquely shaped property in that it starts out at 50 feet wide and then narrows down at the back to only 35 feet wide. The existing front yard setback to Twilight Road is 9.1 feet where 20 ft.

is required. That will remain so. It is a preexisting condition. To require the applicant to move the house to comply with the ordinance would be an extreme hardship on them. Utilizing the township right of way, one could fit one reasonably sized car in that driveway area. They would request a variance for parking if that is necessary. It is an existing condition. There is really no where else on the property to place an additional parking space. It would also increase the impervious coverage calculations for the site. The existing garage entrance setback is an existing variance condition. They request a variance. They are asking for a variance for a 4 ft. setback in the rear for the newly constructed area that is currently 0.7 feet. They are requesting a variance for the combined side yard setback that is 1.2 ft. where 16 ft. is required. This is mainly due to the existing garage and the uniqueness of the property. It comes down to 35 ft. in the rear. They are actually reducing the building coverage to 44.3% from 45.2%. They would request a variance for the maximum allowable of 35%. They are bringing the building more into compliance than it is now. They are reducing lot coverage from 62.1% down to 58.5%. They are requesting a variance for the maximum of 50% allowed.

Mr. Burdick stated that the applicant has had some problems with the existing structure that has led to an extensive mold problem within their home.

They are removing part of the home to be replaced with a smaller footprint. The site requires several variances which are basically existing conditions. They are reducing current building coverage and impervious coverage. The proposed home will be further from the side yard than the existing condition. It is a unique condition that the applicant can not pick up additional property from the rear, toward the west or to the front.

The house will have a little bit of a higher roof than it has now. The houses adjacent to this are higher than this house.

Mr. Burdick confirmed to Mayor Curtis that without doing anything to the second floor they are raising the roof 6 ft. with the peaked roof. The first floor will be raised 1.7 feet to comply with FEMA. That will get it above flood elevation.

Ms. Tell asked why the roof would be so high?

Mr. Burdick stated that the new roof would line up with the garage for aesthetics.

Mr. Zabarsky marked into evidence A-13, a photo of the mid section that will be reconstructed.

Mr. Burdick confirmed to Mr. Kellogg that the first floor will be somewhat pitched and cathedral like. There is no second floor. The roof will be as tall as the peak of the garage.

Mr. Magory stated it looks like the design of the original structure, it was a breezeway between the house and the garage. Somewhere along the line someone enclosed it. It was never designed to be lived in.

Mr. Burdick confirmed to Mr. Petrillo the south side of the house, the main part, is above flood.

Mr. Burdick stated the advantages of approving the variances are a newer and more attractive home, it will be closer to conformity with the ordinance, it will bring the home

above flood and into compliance with local, state and federal regulations. The applicant will also give up the right of a two family house making it a one family house.

Mr. Magory stated this is a unique property. In order for it to exist in the form it is today, it relies on the adjoining property. The adjoining property is raised and there is a wall. It looks like there still will be pooling. Is there some provision to get rid of some of the excess water? If the wall on the adjoining property deteriorates it is gone. He is surprised that it is not being raised 24 inches.

Mr. Burdick stated there are areas that are low on the west side of the structure and the areas in the front are relatively low as well. They will certainly work with the engineer to design grades to get it as much as possible.

Mr. Gage confirmed that you would step down into the main part of the home and step down into the garage. The mid section is the only part that will be raised above flood elevation.

Mr. Zabarsky confirmed the area above the ceiling is uninhabitable space.

Mr. Burdick confirmed to Ms. Tell that the height of the roof in the proposed mid section will be 18 ft. The garage is currently at the maximum height of 19.7 ft.

Mr. Burdick confirmed to Mr. Furze that the current structure is on a slab.

Mayor Curtis asked how extensive is the demolition of the middle part? How are you going to get rid of the mold? We have had other homes that have found mold, gotten into construction and then have had to take the whole thing down.

Mr. Burdick confirmed the middle section is being totally demolished. If mold were found in other areas we would have to remediate at that time or redesign and come back before the Planning Board for amended approval. The air, in the other areas of the house, had not been tested.

Mr. Furze opened the meeting for public session.

Mr. Tom Gage, 49 Twilight, was sworn in by Mr. Zabarsky. He had lived opposite this house for 37 years. He has seen various owners suffer through the various flooding that has occurred down there. About 25 years ago the owner tried to put a mote in on the Lake Ave. side. It did not hold back the water. It is an unhealthy situation, he feels sorry for them. He has no objections and he would welcome the change and hopes the Board would also see fit to approve this application.

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

Mr. Petrillo: He is very familiar with the house. He thinks it is a good idea to raise this house. He is concerned that the main part of the house is still going to remain below flood. He does have an issue with the height of the roof. He thinks they can accomplish what they want to accomplish in the middle section without raising the roof quite as high not to infringe upon the neighbors.

Mr. Magory: Mr. Magory is not as positive as Mr. Petrillo. It appears that the middle part of the house that is proposed to be replaced has lived its useful life to say the least. It is a

major cause of a number of these variances that are being requested here. There is not much that can be done to the landscaping to help with the run off situation. It appears you can not even park a car on this site. He is not in favor of approving any of these variances. **Mayor Curtis:** There is no question in his mind that the middle part of that house needs to be raised up. Mayor's main concern is the mold. He has a feeling that when the rest of the house is looked at it will have mold too. They will have to come back before the Planning Board if something like that occurs. Mayor Curtis was initially concerned that the house to the west would lose its' sight. He cannot picture the height of the house, raising it up 7.7 feet will be below that window. It is on the east side of the house to the west. The garage he does not understand at all. It does not look like it is a two car driveway at this point and he does not see it changing. All that being said Mayor Curtis wants them to survive and live there and he thinks this is a good start. He is just very concerned about the rest of the home. It will not be raised to go above the flood.

Ms. Wojcik: Agrees with Mayor Curtis. Ms. Wojcik's biggest concern is the mold. It had been mentioned earlier that maybe we should wait until they would have the rest of the house tested. She would be for that. Two past variances had been approved for partial and it turned out that the mold existed and they had to come back for a whole new house. It was difficult because they had non conformities and such. Ms. Wojcik would go for the whole house being tested so we can do it all at one time.

Mr. Kellogg: He would support relief for raising the connector to the proper flood level to mitigate the flooding problem this family has had to endure. Mr. Kellogg does not see it necessary to have the roof as tall as the rest of the remaining house.

Mr. Convey: Clearly the applicants need relief from the flood situation. He is forgiving for that relief. He is concerned about the height of the roof. The height of the internal rooms seems like it could be managed without having that roof line as high as it is.

Ms. Wintersteen: There is a strong need for action on this house before another storm. Ms. Wintersteen supports it. She thinks the design is nice. The height is one thing it does not need a variance for. She supports it as designed.

Ms. Tell: The height will be too massive in this section. She feels for the applicant and understands that they have a tough spot there, a tough lot. She stated Mr. Magory and Ms. Wojcik had some good points. It may just be that this structure in this configuration has lived its useful life. Ms. Tell would much rather know before voting whether the mold problem has also affected the other sections. If it has you would wind up having to build an entirely new house with a different set of issues to look at. Whatever this Board does tonight will exist on this property for decades. If it can be remediated and the roof is not built so tall it would be fine, but she would really like to know first whether the main section or the garage section are similarly infected.

Mr. Applegate: He agrees with everyone on the Board. The roofline is massive. He agrees on what they are trying to do.

Mr. Furze: Mr. Furze believes it is not the Board's place to tell you to come back after doing some more discovering. He would not mind if subsequently you found more work to be done. He is also concerned about the height of the roofline. If the roofline were lowered it would add a little more interest to the building façade. He is sympathetic but would like to see it done in a little different manner. He will go on record to say that he would not mind if the applicant comes back if you find more things.

Mr. Gage stated that before the Board takes a vote he would like a few moments with his clients.

Mr. Gage addressed the Board. He has had the opportunity to speak to his clients about this matter. The Board has had well founded concerns. We would like the opportunity,

without a vote being taken this evening, to consult with their architect to discuss what possible alternatives could be made to the roof. Also, they would like to have the testing performed upon the other parts that remain so they can put to rest the fears the Board has that there will be further issues down the road. So, with the Board's permission they would like to adjourn this matter to next month.

Ms. Tell stated it is the perfect resolution.

Mr. Zabarsky's only caution to the Board is if there is going to be a change for the request of this application in terms of the plans, any and all materials must be filed with the Board at least ten days prior to the hearing. Mr. Gage's client does not have to re-notice.

There was a motion by Mr. Kellogg seconded by Mayor Curtis to adjourn the matter to March 21, 2012 based on the request of the applicant.

Roll Call:

YEAHS: Furze, Kellogg, Tell, Mayor Curtis, Petrillo, Magory, Wojcik, Convey, Wintersteen

NAYS: None

There was a motion by Ms. Wojcik seconded by Mayor Curtis to pay the following vouchers:

Maser/747 East Ave.	370.00
Zabarsky/666 Lake Ave.	870.00
Zabarsky/41 Johnson St.	540.00

There being no further business the meeting was adjourned.

Respectfully Submitted,

Laura Tuzzolino
Board Clerk