

**The meeting of the Bay Head Planning Board was held on Wednesday, January 18, 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, Peter Harrington, Verity Frizzell, Brian Magory, Patricia Wojcik, Edward Convey, Kathleen Wintersteen, Fred Applegate**

**Absent: Mayor Curtis, Bart Petrillo**

**Engineer – Susan Brasefield**

**Attorney – Steven Zabarsky, Esq.**

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

**Class IV – Patricia Wojcik**

**Alternate #2 – Edward Convey**

**Alternate #4 – Frederick Applegate**

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

**A motion was made by Mr. Kellogg seconded by Ms. Tell to elect Bill Furze as Chairman. All in favor.**

**A motion was made by Ms. Frizzell seconded by Mr. Furze to elect David Kellogg as Vice-Chairman. All in favor.**

**A motion was made by Ms. Tell seconded by Mr. Furze to elect Verity Frizzell as Secretary. All in favor.**

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

**The following were appointed:**

**Attorney                      Steven Zabarsky, Esq.**

**Engineer                      Susan Brasefield/Maser Consulting**

**Clerk                              Laura Tuzzolino**

**All in favor.**

**The meeting dates and time were designated as the third Wednesday of each month at 7:30PM. The Ocean Star and Asbury Park Press were designated as the Official Newspapers. All in favor.**

**The December 21, 2011 minutes were approved, as corrected, on a motion by Ms. Frizzell, seconded by Kathleen Wintersteen with all in favor.**

**Roll Call:**

**YEAS:** Furze, Kellogg, Tell, Harrington, Magory, Frizzell, Wojcik, Convey, Wintersteen, Applegate

**NAYS:** None

**Mr. Furze stated the Board had for review the Resolution of 747 East Avenue, Bay Head, NJ a/k/a Block 80, Lot 4 which was approved at the meeting of December 21, 2011.**

**Mr. Kellogg motioned, seconded by Ms. Wintersteen that the Resolution, as corrected, be approved and passed on a roll call vote as follows:**

**YEAS:** Furze, Kellogg, Frizzell, Convey, Wintersteen

**Mr. Furze stated the Board had for review the informal application of the Arthur Strickland Revocable Living Trust, Scow Ditch East Partnership, Bay Head, NJ a/k/a Block 25, Lot 5, 6, 9, 11.**

**Mr. William Gage stated he will be representing the applicant. The properties for many years were owned by the late Arthur Strickland. Because of various non-conformities on these lots they were merged into one lot years ago. Back in 2008 when Arthur Strickland wanted to market these properties for sale an application was brought for a subdivision. That subdivision was granted in 2008. As part of that subdivision Resolution it stipulated there was to be a community parking lot, which is for the most part on lot number 9, with an access easement from Lake Ave. through Lot 9 to service the properties on Bridge Avenue. The next year an application for a modification of that Resolution was brought where by the two properties located on Bridge Avenue, the Mark, Fore & Strike building and the Cobwebs building would each have two designated parking spots on their property to be used strictly by those two properties. As part of the Resolution, however, it stipulated if it ever came to the point where it would be converted into a fully residential lot or a fully commercial use that the exclusive use of those two parking spaces would cease and revert to the large community parking lot to be used by any of the occupants or customers of lots 5, 6, 9 and 11.**

**Mr. Gage stated about a year ago the Strickland family had contacted him about several legal matters to review. Mr. Gage had taken a look at the Resolutions and expressed to them the concerns that he had. By the terms of the Resolution essentially a cloud on title had been placed whereby spaces on the lots on Bridge Avenue would no longer be for the exclusive use of those properties in the event a current or future owner wanted to convert those lots to a different but conforming use. He also expressed the concern, from a Land Use perspective, if one wanted to convert either of those two lots to a conforming use they would not be able to do so because they would then lose the two designated off street parking spaces which is required for any one family residential use. He can understand the purpose of wanting to try and preserve the commercial space in town. Mr. Gage and his client agree. However, he is not in agreement of doing so in this way. If a party was to buy one of those lots on Bridge Avenue the only way they would find out that there was this issue is to sign a contract. They would then go through attorney review. Then there would be the building inspection. The mortgage would be granted. Then, at that point, they would apply for their title search where they would find out there might be a cloud on title, whereby, they may lose exclusive use to the property they would be purchasing. Mr. Gage stated he is here to ensure the marketability of these lots is properly taken care of.**

**Mr. Zabarsky stated this would fall under mandatory disclosure. It is not a cloud on title it is a restriction on the property.**

**Mr. Gage stated one of the reasons he is here is to express his concerns on this. He was not involved with it at the time and was not fully aware of what was going on at the time. Before he has his clients spend more money on engineers, possibly architects and more on him, he wanted to gain a sense from the Board what the reasoning was at the time and what the Board's attitudes are of amending this approval whereby the two parking spaces on each one of those lots would remain the exclusive use of those lots regardless of what ends up happening with those two properties. If anything he would suggest taking a different route. If for example, the Mark, Fore & Strike building were leveled right now they would still have use of the parking lots in the community parking lot. Why? If they had a vacant lot where they could put a driveway off of Bridge Avenue what would be the purpose of having access through the Manasquan Savings Bank lot? Similarly, if it were ever converted into a single family use why would they need more off street parking on the Manasquan Savings Bank lot. They could have their own two exclusive parking spaces on site. He does not understand the logic of it. He believes the best use, from a Land Use perspective, is to enable each lot to maintain their own two off street parking spaces. If they were ever to convert it into individual residential uses they would lose their ability to have parking spaces on a neighboring lot. If the buildings are actually ever knocked down whereby they could put in perfectly good driveways off Bridge Avenue, they would lose their access off of Lake Avenue. Mr. Gage believes this is a more sensible approach to what he sees is a very understandable problem. He just doesn't see the point of taking away off street parking spaces on their own lot just because they converted to a permissive use. Arthur Strickland, God rest his soul, at the time this was taking place, was an old man and he was not a very well man. He was represented by someone in his family that may not have understood all the idiosyncrasies of what was going on and what was best for the family in the long run. He does believe, at this point, that it is the most efficient use of all these properties.**

**Ms. Tell stated to Mr. Gage this was the agreement that was very carefully reached by his client's predecessor. It was then revisited in 2009. These easements, with respect to parking, were constructed in an effort to provide some assurance to the town of Bay Head that those properties would remain commercial properties. This could all be understood by listening to the tapes. Ms. Tell does not feel this is a good use of the Board's time.**

**Mr. Gage stated that he did review the files and the Resolution on this quite extensively. He thought it was much more beneficial from the Board's standpoint as well as his clients' standpoint that before retaining the services of expert witnesses to testify to get a flavor from the Board if this has legs or not. If Mr. Gage gets a sense that this is a non starter then he will advise his clients. That is why he was there.**

**Ms. Tell stated that when you talk about a cloud on title and the discussion of market value, honestly, to Ms. Tell it seems like bad faith. This was an arrangement that the Board entered into with your client's predecessor. This is exactly what they wanted. These were their restrictive covenants.**

**Mr. Gage stated the current owner's interest is seeking out the possibility of potentially changing it.**

**Ms. Tell stated that Mr. Gage should rephrase the way he presents it then. Mr. Gage stated that if he gave the impression that the Board acted in a de facto manner in rezoning it, he was incorrect. He just does not think it is the most efficient use of the property in restricting the use of the property in what is otherwise a permissive manner.**

**Ms. Tell stated that her view is if the client wants to pursue it, bring the application and then we hear it. It is not very productive to hear it now for a third reiteration and then again for a fourth reiteration.**

**Mr. Gage stated that there will not be a fourth reiteration if he can go back to his client stating he believes it is not an efficient use of the Board's time or his client's time. He certainly did not mean to waste the Board's time. He was hoping to save the Board's time down the line and save his client's time and resources. That was the reason.**

**Mr. Furze added that he was one of the few Board members here tonight that was here the last time this application was heard. It would have been very beneficial for the members here tonight to physically see that plat.**

**Mr. Zabarsky confirmed to Ms. Wojcik that in 2008 the ten lots which included lot 18 were realigned and subdivided into four lots 5, 6, 9 and 11. Lot 18 is gone.**

**Mr. Zabarsky stated the Board should be aware that whenever a property owner would like to modify a condition after the opportunity to bring a legal action has long past, an application would have to be made to the Board. The issues raised by the application would be whether the condition previously imposed continues to advance the purposes of zoning or planning for which it was imposed and whether the conditions should now be modified, annulled or retained. The Board would adjudicate that request and then that would give the applicant the right, if the applicant is dissatisfied with the Board's decision, to then bring an action in court to seek to overturn the decision of the Board. Mr. Zabarsky specifically remembers the application and there was much discussion that someday someone might want to use them for the purposes of a house or a residence. Until the Board has an application that says they have a contract to sell this, it is very premature to start guessing what is going on there. In other words, the intent of those parking spaces he assumes is being fulfilled as the properties are currently being used as they were used in 2009. Unless there is a change or a contract or something, it would be pure speculation for the Board to deal with that condition.**

**Mr. Gage stated that by coming here this evening and hearing this information from Mr. Zabarsky and from some of the Board members he can advise the client better, not being there two years ago, as to whether or not he thinks this is an appropriate avenue to take and to see what their benefit cost analysis would be.**

**Mr. Furze stated there is no old business.**

**Mr. Furze stated under new business he would like to entertain priorities for the upcoming year. Some can be categorized as old business and some new business.**

**Mr. Furze stated reviving the Historic Preservation efforts is one priority.**

**Mr. Harrington asked if there is a possibility they could do something about the beachfront in terms of what really is buildable?**

**Mr. Kellogg stated they could pass a draft to council. The worst they can say is no.**

**Mr. Furze stated what they were told was that in mass they could not have the revised Land Use document approved. However, if it is proposed in segments it can be done. Maybe, with Mr. Magory's presence here, we could reestablish our relationship with the Council.**

**Mr. Gage stated that on the oceanfront properties it was reduced to 25% lot coverage.**

**Ms. Tell asked if there is some independent way to measure lot coverage. There is no one second guessing the survey.**

**Mr. Furze had suggested a long time ago that we require the applicants file electronically. Then we could check the measurements really quickly.**

**Ms. Brasefield stated that she does not believe anyone at Borough Hall has the software to take that electronic filing and do anything with it.**

**Mr. Furze stated that it is ok if the outcome is acceptable with the community and it is not a detriment to our community.**

**Mr. Zabarsky stated that under the statute the Planning Board has the authority to hire an expert as it deems necessary to assist it. The governing body must make provisions in their budget for the Planning Board to do so.**

**Ms. Tell asked if they could just ask Bart to review some instances that we are aware of lately where the house does not seem to conform to the rule.**

**Mr. Zabarsky stated that you can hire an expert on an ad hoc basis, for certain projects.**

**Ms. Tell stated we could do this on a random basis to keep everybody honest.**

**Ms. Brasefield said that it would be possible for Bart or Doug to go out and take measurements if they have a survey of what existed prior to the construction. Ms. Brasefield thinks sometimes the eye is deceiving and the measurements are correct.**

**Ms. Tell stated that Mr. Gilman wanted the Board to look into plaques for historic homes.**

**Mr. Harrington stated that the Historical Society is researching this and he will keep the Board informed. It is very worthwhile. People do not know what we have here.**

**Mr. Furze opened the meeting for public discussion.**

**Mr. Bob Hein, 204 East Avenue, addressed the Board. Mr. Hein applauds the goals of the Board. Any assistance on the dunes is appreciated. His father is still trying to get the dune declared unbuildable. Lastly, he loves to hear all the conversations but he can not focus on multiple discussions. He would appreciate one discussion at a time because he really wants to hear everybody.**

**Mr. Ed King, 500 Main Avenue, addressed the Board. He applauds the direction the Board is going. Why can't you just raise the building fees to cover the cost of sending somebody to check to make sure the stuff is right?**

**Mr. Furze stated they had some discussions on the fee schedule in general but the consensus was there is a general sympathy to the applicant regarding the fee structure.**

**Ms. Wintersteen stated that we could discuss with Bart Petrillo some of these situations so we know better when they are asked questions.**

**Mr. Furze stated that the Board members should come prepared with questions for Mr. Petrillo and give him time to respond.**

**Ms. Wintersteen stated that if Bart is too busy maybe one of the Board members can keep track of the application that we have approved instead of him coming to us. We do not know what happens after we leave here.**

**Mr. Bill Gage, 115 Bridge Ave., addressed the Board. Most times it is not the case of what comes before this Board, the problem is when they don't come before the Planning Board and are given a building permit.**

**Mr. Kellogg stated that Mr. Petrillo signs off on the permit that is ok.**

**Mr. Furze stated that it is not uncommon for errors to be made, as slight as they may be. It happens.**

**Mr. Zabarsky stated that the State Municipal Land Law specifically says that you can develop an ordinance in a municipality for payments to professionals for services rendered for review of applications or development, for inspections of improvements and developments under construction by outside consultants, when an application is beyond their expertise. It would be for any permit.**

**Mr. Magory stated that what they are really looking at are surveyors and their inaccuracies. Do we have any data as how inaccurate surveyors normally are?**

**Ms. Brasfield will look into this.**

**Ms. Frizzell stated that surveyors usually don't round to two decimal places. There is also a built in inaccuracy.**

**Mr. Magory stated that he believes those inaccuracies are not the ones people are going to see when they walk down the street. He does not think this is the type of inaccuracy they are looking at. It is more like did they build out 35% or 40%. He is not getting the feeling we believe the survey is going to be off by that kind of difference.**

**Ms. Tell stated that for a small fee we may be able to offer to the residence of Bay Head some assurance that there is a third party out there keeping everybody honest. That will offer a peace of mind.**

**Mr. Furze stated there are two members of the community here this evening. Please go home and tell your family and your neighbor to come to our next meeting. Eventually we will have greater attendance. We would be better able to promote some of these things that will benefit our community.**

**There being no vouchers to be approved the meeting was adjourned.**

**Respectfully Submitted,**

**Laura Tuzzolino  
Board Clerk**