

**The meeting of the Bay Head Planning Board was held on Wednesday, July 18, 2012 at 7:30 p.m.**

**Mr. Kellogg 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: David Kellogg, Mayor Curtis, Bart Petrillo, Brian Magory, Peter Harrington, Patricia Wojcik, William Tubbs, Edward Convey, Kathleen Wintersteen, Fred Applegate  
Absent: William Furze, Verity Frizzell, Kathleen Tell  
Engineer – Lisa DiFranza                      Attorney – Steven Zabarsky, Esq.**

**The June 20, 2012 minutes were approved on a motion by Mr. Magory, seconded by Mr. Petrillo with all in favor.**

**Roll Call:  
YEAHS: Kellogg, Mayor Curtis, Petrillo, Magory, Harrington, Wojcik, Tubbs, Convey, Wintersteen, Applegate  
NAYS: None**

**Mr. Kellogg stated the Board had for review the Resolution of 700 Clayton Avenue Securities Trading Co., L.P., 519 East Avenue, Bay Head, NJ a/k/a Block 65, Lot 2 which was approved at the meeting of June 20, 2012.**

**Mayor Curtis motioned, seconded by Mr. Magory that the Resolution be approved and passed on a roll call vote as follows:  
YEAHS: Mayor Curtis, Petrillo, Magory, Tubbs, Convey, Wintersteen, Applegate  
NAYS: None**

**Mr. Kellogg stated the Board had for review the application of Mr. & Mrs. Craig Chobor, 28 Karge Street, Bay Head, NJ a/k/a Block 33.01, Lot 11.**

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

**Mr. Gage stated there is an existing house on this property which has the following non conforming conditions, a front yard setback of 11 feet where 20 feet is required, a lot size of 4,600 square feet where 5,000 square feet is required and one has to do with a 1.5 foot setback for an accessory structure on the east side of the property where 4 feet is required.**

**The following were marked into evidence:**

- A-1 Application, dated June 29, 2012**
- A-2 Survey prepared by Dennis W. Kortze & Assoc., dated March 29, 2012**
- A-3 Architectural Plans titled “Proposed Residence for Craig and Marie Chobor, 28 Karge Street”, prepared by Feltz and Frizzell Architects, dated June 21, 2012**
- A-4 Denial Letter from Zoning Officer Bart Petrillo, dated July 2, 2012**
- A-5 Letter from the Planning Board Engineer, dated July 5, 2012 deeming the application complete.**
- A-6 Review letter from the Planning Board Engineer, dated July 12, 2012**

**A-7 Proof of Service**

**A-8 Proof of Publication**

**Mr. Craig Chobor was sworn in by Mr. Zabarsky.**

**Mr. Chobor stated they have been renting in Bay Head for a number of years on Karge as well, in the middle of the block. His wife loved the inside and how it was set up. If they ever purchased a home in Bay Head they would want one with these characteristics. They had researched Feltz & Frizzell Architects and found out that they were actually the architects for the house that they had stayed in on Karge. Verity Frizzell said that at the end of the day we are going to end up having to take the house down and use the same footprint and build the house the way they would want. The first thing they would want to do is construct a big open porch. We would start with the main front of the house within the setbacks so the only thing encroaching would be the front porch.**

**Mr. Chobor confirmed to Mr. Gage that the shed on the east side of the property would be eliminated. That non-conforming condition would disappear.**

**Mr. Gage summarized that the applicant would be eliminating one non-conforming condition, reducing a second non-conforming condition and would not be creating any brand new non-conforming conditions.**

**Mayor Curtis' question when he reviewed the application was if you have now created a deeper rear yard setback why can't you comply with the front yard setback?**

**Mr. Gage stated if they pushed the house back they would reduce the back yard to 15 feet. This would not be a realistic backyard to entertain or for the children to play. In addition, it would not look the same as many of the other houses in the neighborhood. The reason we are down here is to enjoy the outside space.**

**Mr. Magory confirmed with Mr. Chobor that the house would pretty much line up with the other houses. It would conform with the neighborhood.**

**Mr. Gage confirmed with Mr. Magory that there would be an increase in lot coverage but it would still be conforming.**

**Ms. Wintersteen stated that since they will be demolishing it the new structure should be within the setbacks and they have enough room to do that. They could conform to all the setbacks by just moving this house back.**

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

**Mr. Burdick stated that his office performed a structural inspection of the existing home and found extensive foundation problems, sagging floors and determined that the home is generally in poor condition. The applicant wishes to remove the existing structure and replace it with a new, up to date structure which will be constructed in accordance with up to date building standards.**

**Mr. Burdick stated, with the regard to the variances, clearly the substandard lot area is a pre existing non conformity and the applicant cannot bring the condition into compliance since all adjacent property is fully developed with single family homes.**

**Mr. Burdick stated that, as Mr. Gage had mentioned, they are requesting an 11 foot, front yard setback not to the home itself but to the steps as shown on A2 of 3 of the Frizzell architectural plans. If they were to move the house back it would reduce the applicant's use of the rear yard. He feels it is better to keep the house forward. It is consistent to the area. The home will be in line with the adjacent homes on the north side of the block. Since they will be replacing one single family home with a new one no increase in development intensity, noise or traffic is expected. A small reduction in open space will be experienced due to a larger home but that is within the ordinance standards. The advantages of approving the variances are that it will replace a home which is in poor condition with a new home with construction in accordance with current codes. The structure will reduce the front yard setback variance and provide a substantial aesthetic improvement for the property and surrounding area. Based on this, Mr. Burdick believes the variances should be granted without substantial detriment to the zoning ordinance, master plan or public good and he requests that the board approve the variance request.**

**Mr. Tubbs stated to Mr. Gage that the application marked that there are deed restrictions.**

**Mr. Gage state that the deed restriction from 1921 does have a provision as far as the setback of any structures in this area. The structure should be 20 feet back from Karge Street itself. The deed restriction is a contract between private individuals. It is not something within the jurisdiction of the zoning board of adjustment to enforce. There is also a time limit to enforce such a deed restriction such as this. Being that the home is about 100 years old that time has past.**

**On that point, Mr. Harrington stated this is a contributing structure according to the historic inventory that was done by the U.S. Department of the Interior for our historic designation.**

**Mr. Gage stated that he was not aware.**

**Mr. Zabarsky stated that the deed restriction should have been attached to the application.**

**Mr. Zabarsky confirmed that the deed restriction states "owner and subject to the covenant in the title deed to Edward S. Sayers restricting the erection of any buildings nearer than 20 feet is the line of Karge Street". The question is if the deed restriction has any bearing at all on the Board's decision. Mr. Zabarsky has not had time to research this so has no legal answer at this time. The Board is not bound by this restrictive covenant. He does not think this is the law. His gut is that the Board can consider that when this property was transferred there was an intent and consideration by the owner of the property to maintain the 20 foot setback from Karge Street. It is the Board's discretion.**

**Mr. Zabarsky confirmed with Mr. Petrillo that the porch and the stairs are part of the building. The setback goes to the end of the stairs.**

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

**Tom Dencsak, 320 East Avenue, was sworn in by Mr. Zabarsky. Mr. Dencsak had examined the drawings previously and he is in agreement with the setback as designed. If the building is moved further back in encroaches onto his property which is directly behind it.**

**Nancy Hance, 25 Karge Street, was sworn in by Mr. Zabarsky. Ms. Hance had a question about the impervious coverage increase and what is being done to the current structure. She thought the house was being built on the same footprint. Where does the increase occur?**

**Mr. Burdick stated that the impervious coverage is mainly with the patio in the rear. The current impervious coverage is 35%. It will increase to 43.5%. The maximum is 50%. That is based on the lot area itself.**

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

**Mr. Applegate: Mr. Applegate feels there is no consideration of lot size with the house they designed. It is more house than the lot will handle.**

**Mr. Tubbs: Mr. Tubbs likes the drawings as presented.**

**Mr. Harrington: Mr. Harrington stated that he is a preservationist. He is always sad to see one of them taken down, but that being said, he feels if the house was moved back to meet the twenty foot front yard setback it would be the wrong move.**

**Ms. Wintersteen: Ms. Wintersteen does not agree. This house can be the same size within the setback. That is the code. You are demolishing a building so you have to meet the new criteria. She does not buy that they would need that big of a backyard so they can cut the front yard short.**

**Mr. Convey: Mr. Convey stated that to keep the symmetry of the street preserved he is in agreement of building the house as proposed.**

**Mr. Petrillo: He thinks the house needs to be lined up with the others. He is in favor of the application.**

**Mr. Magory: As far as the streetscape he thinks it is good planning. He is in favor of the setback. If the house was moved back it would start to look odd. Sometimes it becomes a burden to maintain an old home when foundations were not properly put in.**

**Ms. Wojcik: Ms. Wojcik has no problem with the home. It is a beautiful home and agrees with the streetscape. She is highly sensitive to the restrictions. She has worked in the tax office for thirty years here and has seen issues from early 1900's and in court for a couple of years. Ms. Wojcik just advised the applicant to research it and to tread cautiously.**

**Mayor Curtis: Mayor Curtis is in favor of the proposal. Mayor believes the house will add something to the neighborhood. He is in very much favor of the porch.**

**Mr. Kellogg: He has always been a proponent that if someone was going to take down a home in this town they should be able to design something that will conform to our zoning ordinance. However, because this lot is only 92 feet deep and because he is sensitive to the streetscape he believes the house would look ridiculous if it were set back 20 feet. He is also sensitive to the neighbor's concern having gone through that, having a monster over shadowing where he lives. He believes he would vote in favor of this application given that it will preserve the streetscape and not impose a great wall on a neighbor.**

**There was a motion by Mayor Curtis seconded by Mr. Convey that the application be approved.**

**Roll Call:**

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

**NAYS: None**

**Mr. Zabarsky stated the Memorializing Resolution will be adopted at the next regular meeting.**

**Mr. Kellogg stated the Board had for review the application of Mr. Jonathon C. Younghans, 524 Lake Ave., Bay Head, NJ a/k/a Block 53, Lot 1.**

**Mr. Zabarsky confirmed with Mr. Younghans that he is prepared to present his application and that he is here without counsel.**

**Mr. Zabarsky reviewed who is eligible to vote on this application. Mr. Magory, as a council member, under the land use law and the ordinance may not sit on a use variance application. As a matter of law he is conflicted. Mayor Curtis, likewise, as a member of the council is ineligible to vote on a use variance application. Mr. Kellogg is a member of the Bay Head Yacht Club which is within 200 feet of this property and will recuse himself on that basis. Mr. Tubbs has recused himself for personal reasons. He is the step brother of the applicant. Mr. Zabarsky stated this is a nine member planning board. The applicant will need six out of nine votes, 2/3 of the full authorized membership to obtain a use variance. Based on the recusals and conflicts tonight, we only have six members here. If you would like to proceed you will, as a matter of law, need six of the six votes to achieve your application. You have the right to have the matter carried. Mr. Furze and Ms. Frizzell, if present at the next meeting, will be eligible to vote. You would then need six out of the eight votes. The full membership of nine will be unable to be met but we will have eight.**

**Mr. Younghans stated he would like to move forward with six members because he feels for both the Applegate's and for himself, there is a lot riding where a decision needs to be made one way or the other.**

**Mr. Zabarsky confirmed with the eligible voters here tonight, Mr. Petrillo, Ms. Wojcik, Mr. Convey, Ms. Wintersteen, Mr. Harrington and Mr. Applegate, that there is no reason they might not be able to make next months meeting.**

**The senior member of the Board, Mr. Petrillo, will conduct the meeting this evening.**

**Mr. Jonathon C. Younghans was sworn in by Mr. Zabarsky.**

**The following was marked into evidence:**

**A-1 Application, dated July 3, 2012**

**A-2 Survey prepared by Elbert Morris, Morris Surveyors, Inc., dated June 25, 2012**

**A-3 Plans titled, "Proposed Additions and Alterations, Applegate's, 524 Lake Avenue", consisting of 5 sheets, prepared by William J. Taylor, P.E., and Joseph A. Gallagher, AIA, dated July 2, 2012**

**A-4 A Site Plan titled "Proposed Additions and Alterations, Site Plan and Maps, Photos, Schedule, Signatures, Applegate's, 524 Lake Avenue, dated July 2, 2012**

**A-5 Letter from the Planning Board Engineer, dated July 6, 2012 deeming the application complete.**

**A-6 Review letter from the Planning Board Engineer, dated July 12, 2012**

**A-7 Proof of Service**

**A-8 Proof of Publication**

**Mr. Younghans stated he has addressed the engineer's letter and has made some changes to make it more clear, as to what was asked for. There were many levels of questions.**

**Mr. Younghans stated to Mr. Zabarsky that some of the setbacks were amended, not all of the setbacks were called out. The coverages were all covered in the original documents but are laid out so they are easier to see.**

**Mr. Zabarsky stated that all documents to be considered must be on file at least ten days before the hearing. If it does not change what really is being proposed and is done for more informational purposes we will see how it goes. Mr. Zabarsky, for purposes of the record, will not give advice to the Board whether this document should have been filed with the Board ten days prior because the public has the right to come and review the documents and if it really changes what was previously submitted. With a document we can't. But we do not know that yet so we will mark it A-9.**

**Ms. Tuzzolino marked the document A-9, "For I.D. Only".**

**Mr. Zabarsky stated Mr. Younghans will have testimony on it as we proceed and we will see if it is a problem or not.**

**Ms. Tuzzolino identified the document as "Proposed Additions and Alterations – Site Plan & Maps, Photos, Schedule, Signatures".**

**Mr. Zabarsky stated the document is marked "Revision – Review Letter dated, July 12, 2012." If it is really a revision it would have to have been on file ten days before. We will mark it for I.D. at this time. It may be that the Board can't consider it.**

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

**Mr. Taylor confirmed with Mr. Younghans that A-9 are clarifications to the review letter from the Planning Board Engineer. There is a revision on the two parking spaces.**

**Mr. Younghans stated that his intention is to buy Applegate's Hardware. He is seeking a use variance for two apartments upstairs where one is permitted by code. They have gone to great lengths to make the building look so it will fit into the Bay Head style, more of a shingled style building. They have been very sensitive to size and height. They have been very sensitive to the neighbors to the north. The intention below is to maintain Applegate's in a portion of the first floor and find other retail users for the other parts of the first floor. They are trying to spruce it up and make it economically viable. The apartments are not big. There is one 2 bedroom apartment and one 3 bedroom apartment. One of them will be for himself, the other for his mom and step dad. The lots historically and now are two lots, lots one and two.**

**Mr. Zabarsky marked into evidence:**

**A-10: A photograph that says, “Looking north on Lake Avenue showing Applegate’s Hardware, Applegate’s Garage and All Saints Church around 1911. Opposite: Applegate’s Garage in 1914”. It was taken from a historical book.**

**Mr. Younghans just wanted to identify that there were two lots are there are still two lots, lots one and two.**

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

**Mr. Gallagher stated that he submitted the architectural drawings marked into evidence as A-3. Currently the hardware store has more of an industrial quality to it. The proposed plans will transform the look of the building into more of a residential character. The roof lines will pick up on the local architecture. The upper floors of the building are going to have shingled siding. Overall, it is going to be an improvement to the aesthetic quality of the location. On page A-2 there is a 3D view. There is a turret on the roof that is there because of the elevator enclosure inside the building.**

**Mr. Gallagher confirmed to Ms. Wintersteen that the bottom portion of the building will remain brick.**

**Mr. Gallagher stated that the upper floor is actually set back to give some architectural relief. There are a few balconies that project out from the upper front wall to give some architectural relief as well. Page A-3, you can see the retail space is basically to the right hand side of the building. There is a large retail space where the current hardware store is located. To the left side of the first floor there is a small retail space in the front, two resident garages and a narrow retail space in the back. The rear right is some storage space, some being for the residents and a small part being for the retail number one, the hardware store. The residents will get access to a hallway and an elevator as well as a stairway going up to the next floor.**

**Mr. Gallagher stated on the second floor, page A-4, the left is apartment number one, the right side is apartment number two. On the third floor, page A-5, is living area. The bedrooms are back down on the second level as shown on A-4.**

**Mr. Petrillo stated that on A-5 there is a deck on that third level. He asked Mr. Gallagher if that is an open deck.**

**Mr. Gallagher said yes.**

**Mr. Petrillo stated that open decks are not allowed.**

**Mr. Zabarsky stated there is no allowance in our ordinance for roof top, open area deck or use of space. That would be a variance request.**

**Mr. Petrillo stated that the tower is well over thirty five feet. That is not allowed. That is an extension of the building and you are going to need a variance to put that in.**

**Mr. Zabarsky stated that the application does not request a height variance.**

**Mr. Taylor stated it is a cupola.**

**Mr. Petrillo stated that as far as he is concerned it is not a cupola. It is part of the building.**

**Mr. Younghans stated that in working with the elevator company this week they do not need this much height. It is going to be difficult to comply with the thirty five feet. It is going to be really close.**

**Mr. Zabarsky stated there are no plans for that change. That will be a major revision to the plan.**

**Mr. Taylor stated that if the Board does not think it is a good architectural feature we will get rid of it.**

**Ms. Tuzzolino marked into evidence:  
A-11: Architectural rendering without elevator tower**

**Mr. Zabarsky stated amended plans are needed for this change.**

**Mr. Zabarsky stated that on the architectural drawings there is a fourth bedroom shown. You represented it as a three bedroom apartment and a two bedroom apartment. Be clear here.**

**Mr. Gallagher confirmed that if it has a closet in it then it has to be identified as a bedroom. If you do not intend for it to be used as a bedroom then the closet can be taken out and change it to a study or whatever.**

**Mr. Zabarsky stated that the applicant has requested a use variance for an additional residential apartment which is not permitted in the zone. If the representation is that it is a two bedroom and a three bedroom that is what it is going to be. They will have to be two, separate units.**

**Ms. Wojcik stated that on drawing A-4 it is not clear that it is two, separate living units. It looks like one big apartment.**

**Mr. William H. Hamilton, principle of Omland Engineering Associates and licensed Professional Planner and Landscape Architect was sworn in by Mr. Zabarsky.**

**Mr. Hamilton reviewed the Planning Board Engineer's review letter, dated July 12, 2012, marked as exhibit A-6.**

**Mr. Hamilton stated there has been a change in the front yard setback number two, to include the overhangs.**

**Mr. Zabarsky stated it more and more looks like a revision that would have to be filed ten days prior for the Planning Board and the public to review.**

**Mr. Petrillo confirmed to Mr. Taylor, as they had discussed, decks, covered or uncovered count as building coverage.**

**Mr. Zabarsky stated that the applicant will be back next month with revised building coverages.**

**Mr. Gallagher stated that all the variances he is listing as he reviews the Planning Board Engineer's review letter will at some time have supportive proofs.**

**Mr. Zabarsky stated that the Board is going to request for the next meeting, in detail, as to the variances being requested so it is crystal clear to everybody. The real issue is if there has to be re-notification. Mr. Zabarsky stated to Ms. Tuzzolino that he will look at the publication to see if there are any major problems.**

**Mr. Gallagher stated that they are reducing the retail square footage of this building. They are unclear then if they need a variance for parking for the commercial use. They believe they are compliant. They believe they comply with the residential parking ordinance. They have addressed the handicapped parking on the revised drawings to conform to the ADA requirements.**

**Mr. Gallagher confirmed with Ms. Wintersteen that each unit gets two spaces, one parks behind the other.**

**Ms. Wojcik asked how if these two parking spaces are in the building/garage and customers park along Mount Street, how do these cars get out?**

**Mr. Gallagher stated the one car would have to be moved if the other car would need to get out.**

**Mr. Zabarsky confirmed that the parking is going to be reserved for that one apartment owner. They are going to deal with the piggy back parking situation. These parking spots would no longer be available for customers. They would be designated for the apartments.**

**Mr. Gallagher stated there would also be parking available in the municipal parking lot.**

**Mr. Gallagher stated that all additional points listed on the review letter have been addressed on the revised plans or will be addressed.**

**Mr. Gallagher stated they have also identified a potential variance for the loading dock that does not exist now.**

**Mr. Zabarsky stated to Mr. Younghans that Mr. Younghans is going to hear from the Board that they are not going to be prepared to vote tonight based upon the substantial amount of changes and revisions that were either already made by Mr. Taylor on A-9, which is for I.D. only, or that will be made based on the testimony heard tonight. We are going to have to come back. We are going to need those plans. We are also going to need to understand what variances are being asked for from the planner. Have that document on file ten days prior. It is better to re-notice if additional variances are being requested. It is better to be safe than sorry.**

**Mr. Zabarsky stated the members here tonight will be available at the next meeting of August 15, 2012. Mr. Furze and Ms. Frizzell will listen to the tape and be able to vote as well.**

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

**There being no public comment, Mr. Petrillo polled the Board members as to whether the application is carried or voted on this evening:**

**Mr. Applegate: States he would like to carry the application.**

**Mr. Harrington: Carry**

**Ms. Wintersteen: Carry**

**Mr. Convey: Carry**

**Ms. Wojcik: Definitely carry**

**Mr. Petrillo: Carry**

**Mr. Zabarsky stated this is based upon the information provided tonight requesting a revised plan. We are not keeping A-9 as evidence. The Board is going to want a revised plan by Mr. Taylor and Mr. Gallagher as to everything that was testified tonight and in compliance with the Planning Board Engineer's letter. Mr. Hamilton will prepare an exact list of variances being requested at this point because there were more added. Mr. Zabarsky added that the applicant re-notice under the statute, this includes a certified mailing to everybody on the certified list and the publication in the newspaper. Mr. Zabarsky stated that the applicant should note all the bulk variances being requested and then state "and any other variances that may be requested".**

**There was a motion by Mr. Convey seconded by Mr. Petrillo requiring the applicant to submit revised plans at least ten days prior to the next regular meeting of August 15<sup>th</sup> and re-notification in compliance with the statute.**

**Roll Call:**

**YEAHS: Mr. Petrillo, Mr. Harrington, Ms. Wojcik, Mr. Convey, Ms. Wintersteen,**

**Mr. Applegate**

**NAYS: None**

**There was a motion by Mr. Petrillo seconded by Mr. Harrington to pay the following voucher:**

**Maser/519 East Ave.                      150.00**

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

**Respectfully Submitted,**

**Laura Tuzzolino  
Board Clerk**