

**The meeting of the Bay Head Planning Board was held on Wednesday, September 19, 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, William Tubbs, Edward Convey, Kathleen Wintersteen, Fred Applegate**

**Absent: Patricia Wojcik**

**Engineer – Susan Brasefield**

**Attorney – Steven Zabarsky, Esq.**

**The August 15, 2012 minutes were approved on a motion by Ms. Frizzell, seconded by Mr. Petrillo with all in favor.**

**Roll Call:**

**YEAHS: Furze, Kellogg, Frizzell, Mayor Curtis, Petrillo, Magory, Harrington, Convey, Wintersteen, Applegate**

**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.**

**Mr. Zabarsky, for the record, requested the members state their name and the reason for recusing themselves:**

**Mr. Kellogg – He is recusing himself because he is a member of the Bay Head Yacht Club which is within 200 feet of the applicant.**

**Mayor Curtis – He is recusing himself because all three applications are a use variance and yacht club member.**

**Mr. Magory – He is recusing himself because he is a Council Member and all three applications are use variance.**

**Mr. Tubbs – He is recusing himself because he is family.**

**Ms. Tell – She is recusing herself because she is a member of the yacht club.**

**Mr. Zabarsky stated that leaves us with Mr. Petrillo, Chairman Furze, Mr. Convey, Ms. Wintersteen, Mr. Harrington, Ms. Frizzell and Mr. Applegate. All the Board Members here have participated, either in person or by certification, with regard to the two prior hearings that were held. This is a nine member board. This is a multi-variance request also involving a special reason variance. Six affirmative votes are necessary out of seven.**

**Mr. Kevin Sheahy, Attorney, stated he would be representing the applicant.**

**Mr. Sheahy stated although they had not been there for the last two meetings they have had an opportunity to speak at great length to Mr. Younghans. They had the opportunity to review the minutes from the July meeting. They have reviewed all the letters from the Planning Board professionals, as well as, all the plans including the most recent submission.**

**Mr. Sheahy stated there are really five outstanding issues still to deal with.**

1. The vegetative area along the bulkhead of the Scow Ditch and whether or not this area would be considered wetlands, thus under DEP jurisdiction.
2. The proposed third floor deck which is approximately 75 square feet.
3. The under surface for the proposed refuse area. Whether it can be pea gravel as proposed or concrete slab that has been suggested.
- 4.& 5. Deal with the ramps, one in the southwest corner of the building, the other in the front of the building and some alterations to those.

Mr. Sheahy stated that dealing with issue number one, he understands there may be some concerns that this area could be wetlands based on some plants found on this relatively small area. It was recommended that the applicant submit either a Letter of Intent from the DEP identifying it as not being wetlands or some alternative opinion that this is not wetlands. The issue with getting the Letter of Intent has to do with time thus the expense in waiting to get that letter. What the applicant was able to do was to get a letter from Peter Ritchings, dated September 14, 2012. He is the President of the Environmental Management Group. He is an environmental biologist. He did do a site visit. He ultimately came to the conclusion that this is not wetlands and that there would be no DEP jurisdiction. A copy of this letter was provided to Ms. Brasefield. We would ask that the Board accept that as compliance that this is not wetlands as opposed going to the trouble of getting the Letter of Intent and the time and expense of that.

Mr. Sheahy stated the second issue is the third floor deck. This is a 75 square foot deck. There were some issues at the last meeting regarding whether or not this deck complied with the ordinance as well as the appearance of the deck. It wasn't exactly clear on the plans. We have provided the Board with 3-D renderings that should clear up some of those issues. The reason this deck is so important to this project is the ability it would give the property owner to use the home. It is a nice asset to go outside from the kitchen to have a cup of coffee or a sandwich in the afternoon. If you are having guests you can put a cooler outside. It is the only way to get outside from the living area. They think it is an important asset to this project.

Mr. Sheahy stated the next issue deals with the walkway and ramp around the southwest corner of the building. This is all on the recently submitted plans. The previous plans had the walkway wrapping around the building creating an issue with a rear yard setback variance. It was recommended by the Board, that be eliminated. In doing so they eliminated the need for a variance. They also feel it is a better design. Similarly, the ramp in front of the store, there was a question if it was ADA compliant. For safety issues the handrails were eliminated. The ramp will still be ADA compliant.

Mr. Sheahy stated the last issue is the subsurface under the refuse cans. It would be the applicant's preference to have the pea gravel, for aesthetics. It was suggested that maybe concrete would be a better option. The concrete may trigger CAFRA issues as well as additional coverage. This is going to be an owner/occupied premises. The applicant is a member of the community and has an interest in maintaining this area and keeping it free from debris and looking nice.

The following were marked into evidence:

A-21 Letter from Mr. Younghan's addressed to Ms. Laura Tuzzolino, Ms. Sue Brasefield and to the Board of Adjustment and Planning Board Members, dated September 7, 2012

**A-22 Letter, dated September 6, 2012 from Taylor Engineering Company, Titled “Summary of changes to Drawings S1-S4 Revision 1 dated September 6, 2012, Applegates – 524 Lake Ave., Bay Head, NJ**

**A-23 Four, 3-D photos of the 3<sup>rd</sup> floor deck, submitted, September 7, 2012**

**A-24 Twelve photos of properties with decks, submitted September 7, 2012**

**A-25 A Site Plan titled, “Proposed Additions and Alterations, Site Plan and Maps, Photos, Signatures, Applegates, 524 Lake Avenue,” consisting of 4 sheets, prepared by William J. Taylor, dated September 6, 2012.**

**A-26 Memorandum, dated September 12, 2012 from the Planning Board Engineer, reviewing the revised documents, dated September 6, 2012**

**A-27 Freshwater Wetland Assessment of 524 Lake Ave, from Environmental Management Group, dated September 14, 2012**

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

**Mr. Donald E. Tubbs, 216 Channel Lane, Mantoloking, NJ was sworn in by Mr. Zabarsky.**

**Mr. Tubbs stated he would like to be unbiased. His son is an Alternate on the Planning Board and his step son is the applicant and his wife and he are potential residents in one of the apartments that are a part of this application. He has lived in the Mantoloking, Bay Head area for over 80 years. He was a council member and mayor and for many years. After that he served on the Mantoloking Planning Board. So Mr. Tubbs has a good idea on what the Board is confronted with here. Here you have a local resident who is willing to spend his money and time and interest in a poor economy and a very soft retail market to preserve and enhance the building that will have a positive impact on Bay Head.**

**Ms. Payne, 47 Mount St. was sworn in by Mr. Zabarsky.**

**Ms. Payne stated she has lived at 47 Mount Street, a commercial district, for seventeen years. There is nothing with this application she sees compromising her life style. She is in favor of the application.**

**Ms. Tobin, 50 Bridge Ave., was sworn in by Mr. Zabarsky.**

**Ms. Tobin stated she strongly is in favor of approval of this application. To hear the hardware store was closing was a little bit of her family history that was going to be closed. It is a very sentimental thing. To keep the hardware store and to preserve the building and continue a tradition would also help the business community a great deal. Ms. Tobin thanks Mr. Younghans for his application.**

**Mr. Mark Durham, 520 Lake Ave., was sworn in by Mr. Zabarsky.**

**Mr. Durham stated that he and his wife are the neighbors to the north. They have watched this application proceed since June. Mr. Younghans has kept them updated along the way what his plans are and has answered their questions and accommodated them in every way possible. They believe this will be a tremendous benefit to the neighborhood.**

**Mr. Thomas W. Applegate, owner and seller of the project, was sworn in by Mr. Zabarsky.**

**Mr. Applegate stated he is very impressed with the work Jonathon has done. It is not an easy project. He feels that towns need the availability of merchandise within a short area.**

It was just time for him and Mrs. Applegate to retire. They will still be around. Hopefully it will be very successful and make a lot of people happy. It would be a good thing if we could get a few more businesses because it has been going down hill. The town needs some more businesses.

Mr. Furze closed the public session.

Mr. Zabarsky stated that with regards to the issue of a resolution, the request was specifically so Mr. Younghans, if he were to receive an approval for this matter, would not have to wait to start building. Mr. Zabarsky did speak with Mr. Petrillo and confirmed that traditionally this Board does not prohibit an applicant from starting their construction or building due to the fact that a memorializing resolution will be passed at the next regular meeting. If Mr. Younghans is approved tonight on this application with the conditions as the Board imposes or does not impose, as long as he has his plans and whatever is needed to be supplied to Mr. Petrillo. He can submit for the construction permit. He does not need to wait for the memorializing resolution. Mr. Zabarsky thought it was a waste of an expense to draft a resolution that he doesn't know if it was approved or what conditions might be imposed or not be imposed.

Mr. Furze polled the Board Members.

Mr. Petrillo: His only concern with the last meeting was the third floor deck. Mr. Younghans has provided him additional documentation which satisfies his opinion that this deck does conform. He does not have any problem with the application.

Mr. Zabarsky confirmed with the Mr. Petrillo that there are no variances then, for that third floor deck.

Mr. Furze: In his opinion he feels the applicant has done a fantastic job. He is willing to accept the letter regarding the vegetative area. In regards to the deck, the habitable space is in accordance with the ordinance. In regards to the handrails, you are correct. The handrails can be cut back via the accessibility code, however, the required stairs require the railing extensions. They will remind the construction official that you will be using the ramp as the means of egress not the stair. Other than that, thank you very much and he is in favor.

Mr. Zabarsky stated that the Board does not have jurisdiction of the DEP should they come in at some point or think there is an issue there.

Mr. Convey: He has no remaining concerns and is prepared to vote in favor.

Ms. Wintersteen: She agrees.

Mr. Harrington: Yes.

Ms. Frizzell: She disagrees. She thinks the area for the air conditioning units is excessive. It is 250 square feet almost. It is way too much area for the deck. She does not see any accommodation being made for our request to make that area smaller and cover that area instead of a deck. She is not in favor.

Mr. Applegate: With the additional renderings, he is in favor.

There was a motion by Mr. Convey seconded by Ms. Wintersteen to approve the application with all the conditions that were discussed during the hearing and including the new exhibits.

**Roll Call:**

**YEAHS: Furze, Petrillo, Harrington, Convey, Wintersteen, Applegate**

**NAYS: Frizzell**

**Mr. Zabarsky stated that is six affirmative to one. The request is granted.**

**Mr. Furze stated the Board had for review the application for Scow Ditch South LLC, 532-536 Lake Ave., Bay Head, NJ a/k/a Block 54, Lot 2.**

**Mr. William Gage stated he would be representing the applicant.**

**Mr. Gage stated the application before the Board members indicates they are applying for both a C and D variance. The reason he has added and noticed for a D variance is on the ground floor there are six commercial uses. Under the zoning ordinance, they are allowed to have multiple commercial units provided they have at least 500 square feet of floor space. Two units are slightly under the floor space requirement. The ordinance also states that a commercial use is made up of floor space that must be enclosed. In this case where there are multiple uses, it is an open area porch and no part of the porch is designated as any particular use. So therefore although there is an expansion upon the building none of the uses inside that building have an exclusive use to any of that area. Mr. Gage stated he would submit that it is not an expansion of the use on the ground floor. Similarly upstairs, there are four residential units. In our town you are not allowed to have multiple residential units on one lot. Also in our ordinance it is specific that habitable space, of residential units, excludes areas for mechanical devices or utility devices and things of that nature. There will be no expansion of the use. There will nothing different about those residential apartments. Therefore, there are no expansions of any preexisting, non-conforming uses. It should be a C variance as opposed to a D variance.**

**Mr. Zabarsky stated he had no comment. It was a nice presentation by Mr. Gage but Mr. Zabarsky stated that until the Board hears all the testimony and understands the nature of the request and how it is going to be used, he doesn't think the board is going to be able to make an intelligent decision or that he can comment on whether it is a D variance or not. For sure it is a C Variance. Mr. Zabarsky stated we should hear the testimony first and then review whether it is a D variance at the end.**

**Mr. Gage asked if Mr. Magory can vote on this application if it is a C variance.**

**Mr. Zabarsky stated to Mr. Gage that he noticed for a D variance. The Board members assumed you knew what you were doing.**

**Mr. Magory was not present to vote.**

**Mr. Zabarsky stated there are seven Board members available to vote. If it is a D variance you will need 6 out of 7 votes. If it is a C variance the applicant will need 4 out of 7 votes.**

**Mr. Gage stated he is prepared to proceed this evening. At the end of the testimony Mr. Zabarsky can give his council to the Board as to whether or not he believes it is appropriate for a C or a D variance. The Board can then rule accordingly.**

The following were marked into evidence:

A-1 Application, dated September 7, 2012

A-2 Denial Letter from Zoning Officer Bart Petrillo, dated September 6, 2012

A-3 Survey prepared Elbert Morris, Morris Surveyors, Inc., dated March 20, 2010

A-4 Architectural Plans, prepared John J. Lederer, The Lederer & Wright partnership, dated August 15, 2012

A-5 Letter from the Planning Board Engineer, dated August 1, 2012 requesting additional information for the application to be deemed complete.

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

A-7 Review letter from the Planning Board Engineer, dated September 12, 2012

A-8 Proof of Service

A-9 Proof of Publication

Judy B. Davis, 509 West Lake Ave., was sworn in by Mr. Zabarsky.

Ms. Davis stated she is the only managing member of Scow Ditch South LLC. She is the owner of the property located at 532-536 Lake Ave. Ms. Davis inherited it from the prior owner two years ago. During her time of ownership she has been trying to bring the building back to its original use. Currently on the ground level of the building there are six commercial tenants. There are five residential tenants, one downstairs and 4 upstairs. She has hired John Lederer to prepare the architectural plans to alter the building.

Ms. Davis referred to A-4. She would like to replace the porch that originally existed on the east side. Ms. Davis stated to Mr. Zabarsky that the picture on the right side of A-4 depicts the building with an open porch the whole length of the building from the 1930's. It was called the Madison House. The building is the same as it is now, but the porch has been chopped up. The middle black and white photo was taken earlier than the 1930's. It was called the Holiday Inn. The left hand picture was taken around the same time period it is just an isolated shot of the south end.

Ms. Davis stated it would be an open air porch. It will not impact any of the commercial uses on the first floor. The roof on the second floor is going to be raised 8.7 feet for structural soundness and back in the 1920's and 1930's there was no air conditioning in the building. It has been added since. There is a condenser outside on the east side of the building that would have to be moved. There is no other place to put it besides on the roof. We thought we would build a little niche for the air conditioning unit.

Mr. Gage summarized that these alterations are restorative in nature and also allows for air conditioning usage. They will not expand the habitable area in the residential units. It will not expand the floor area or any of the functional areas of the business uses.

Mr. Convey stated there are limited places on that property to put an air conditioning unit particularly if you would like to add a porch to the front. So that is the rationale.

Mr. Furze stated historically, retailers do not want to be obscured from view.

**Ms. Davis stated that she does not believe it will put them in shadow. Her intention is to put a sign on the corner, which is the most visible spot, with a shingle for each business. There is a salon sign there currently. They will have front facing signs over their doorways. So they would have more visibility actually.**

**Mr. Furze appreciates Ms. Davis trying to adhere to the historic essence of what was there. His initial reaction is that the proposal is very plain.**

**Ms. Davis stated it is just a simple, old fashioned porch.**

**Mr. Zabarsky asked Ms. Davis if there were going to be any benches, tables, chairs or anything else on this porch other than you are just going to walk underneath it?**

**Ms. Davis stated a rocking chair would be nice and asked Mr. Zabarsky if that would make a difference?**

**Mr. Zabarsky stated it makes a difference in terms of how it is going to be used and whether it is going to be considered expanding the use of the property and therefore maybe a D variance as opposed to it just being a shed roof. A porch means tables, chairs, places where people congregate, people to relax and attract people for the commercial uses.**

**Mr. Zabarsky stated it is an important question. What is the intended use of that area?**

**Mr. Furze stated that the covered walkway may be close to the property line.**

**Mr. Gage stated that it is not encroaching over the property line.**

**Mr. John J. Lederer, licensed architect and practices at 536 Lake Ave., was sworn in by Mr. Zabarsky.**

**Mr. Lederer stated the project has two phases. The one deals with the improvement to the existing roof structure which is quite low and pitched. It requires a lot of maintenance. The thought was to increase the pitch, overbuild the existing roof to a pitch that would accommodate standard roofing. At the same time, they were looking for a way to accommodate air conditioning units. In the past the building would require a lot of window air conditioning units. So going to packaged units they needed somewhere outside to put them. It made perfect sense to create a well within the roof. They talked about at the same time building some screen type walls around the well so those units would not be visible from the street.**

**Mr. Lederer stated the second stage of the project deals with recreating a porch or a covered walkway along the east side of the existing building. It will enhance the aesthetics of the building. They would change the exterior finish of the walls and upgrade the windows. There would be shutters or other decorative materials that would again emulate the structure as it once was in the past.**

**Mr. Lederer confirmed there will be no impact on the parking.**

**Mr. Lederer stated the 7 foot dimension is to the column line. With the supports for the roof structure they would anticipate then for an overhang not to exceed 12 inches.**

**Mr. Zabarsky confirmed the covered walkway will not encroach over the property line.**

**Mr. Lederer confirmed there will be some type of lighting in the ceiling or sconces along the wall so it is useable and safe.**

**Mr. Lederer stated there are six commercial units downstairs and one residential unit downstairs. Two of those units already have air conditioning. They are going to stay where they are.**

**Mr. Lederer confirmed to Ms. Frizzell that the deck up there to hold the condensers is 9 ft. wide and 24 ft. long. There would be a maximum of 9 units.**

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

**Kate Cutler, 55 Mount St., was sworn in by Mr. Zabarsky.**

**Ms. Cutler lives closest to this property. She thinks having the addition of the porch would be fabulous. She thinks the pitch of the roof aesthetically would be better. She would like to see this application approved.**

**Tom Gage, 49 Twilight, was sworn in by Mr. Zabarsky.**

**Mr. Gage would like to strongly recommend the Boards' approval for this proposal. They, the B.H.I.A., have been a tenant in that building for 35 years. After Irene hit they were flooded out. Judy did a great job restoring that office. Judy should be commended for her efforts and expense for trying to restore a Bay Head, historic building. He would rather have a building with character, history and memories that doesn't conform versus some of those box cutter atrocities we see popping up all over town.**

**Mr. Furze closed the public session.**

**Mr. Furze caucused the Board:**

**Mr. Applegate: He believes in restoration as opposed to cookie cutters. He thinks Judy has a grand idea and is very much in favor of it.**

**Ms. Frizzell: She agrees**

**Mr. Harrington: Yes, Judy has the vision, Brian puts it into reality. The B.H.I.A. is really a fantastic effort.**

**Ms. Wintersteen: Yes, she agrees**

**Mr. Convey: He agrees**

**Mr. Furze: He is in favor. He would like to see all natural material.**

**Mr. Petrillo: He is in favor. He does not like the impression that there is a deck up there. He personally does not like the look.**

**Mr. Zabarsky stated, now that testimony has been given, he would ask the Board to be clear of the use of this area. His reading of the case law is that is purely a covered walkway. It would probably not be considered an expansion of the preexisting non conforming use. So you would not be looking at a D variance. The word "porch" was used. If there were chairs and benches being used then we would be getting into an expansion of what is currently there and would be considered a use variance. For purposes of the vote if the Board wants to limit that area to purely a covered walkway with nothing else to be placed in that area**

such as a bench or a chair then fine. If the Board would like to leave it to the owners' discretion to make it aesthetically pleasing then he thinks it is clearly expanding what currently is being used there and he would suggest it is a D variance situation.

Mr. Furze stated that Mr. Lederer's north elevation does specifically say "new covered porch."

Mr. Gage stated Ms. Davis has not decided on allowing rocking chairs or tables. He would rather be safe and have it represented as a porch as opposed to a walkway and therefore subject it to a D variance situation.

There was a motion by Ms. Frizzell seconded by Mr. Applegate to approve the application.

**Roll Call:**

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

**NAYS:** None

Mr. Furze stated the Board had for review the application for the Bay Head Yacht Club, 111 Metcalf, Bay Head, NJ a/k/a Block 55, Lot 9, 9.01-9.05. 18 and 18.01

Mr. John Paul Doyle, Attorney, stated he will be representing the Bay Head Yacht Club.

Mr. Doyle stated that they come to the Board tonight for a preliminary and final site plan approval as to use two existing buildings in a continued but somewhat supplementary way to how they have been used in the past. First is the Merrick Building. The Merrick Building was approved by this Board in 1999 at which time you found it to be a conforming and permitted use and approved it. It was constructed as proposed and has since been used for yacht club purposes. Yacht Club purposes are permitted in the B-2 zone. We would request to the Board to supplement the uses for other permitted yacht club uses, including specifically, the expansion of the building. The building is about 2,000 sq. ft. We will expand its interior by as little as 10% particularly to include a warming kitchen so as to have the typical, recreational, social, meeting and dining function that is conducted by this yacht club. It also includes the Dale Building we acquired in approximately 2002 with a subsequent subdivision approved by this Board. Although it has been generally used for boat storage it also in the past has been used for other uses which we would seek to continue.

Mr. Doyle stated, as a non profit organization, the Board has an obligation to maintain the traditions of the club and continue to provide a spectrum of recreational, social facilities for young and old of its membership. This is what they are seeking by this application. It also has a duty to run the club in an efficient, economical way for the benefit of the membership and that is why they are here. The application will not due a substantial detriment if any to the zone plan, zoning ordinance or the public good. They will meet the negative criteria so that the application may be granted.

Mr. Doyle stated that in 1999 they were in the B-2 zone, as one parcel. The B-2 allows yacht clubs. There is fact a split zone situation. The zone boundary between the B-2 zone and the R-50 zone runs on an angular way approximately 150-180 feet semi parallel to Lake Ave. The entrance off of Lake Ave. to a depth of about 160 feet and including half of the Merrick Building is in the R-50 zone where yacht clubs are not permitted. Knowing that they will need six out of seven votes, they are prepared to proceed.

**Mr. Zabarsky stated for the record, Mr. Tubbs has rejoined the dais. He is not in conflict of this application. There are eight members which gives the applicant a little better odds. They would need six out of eight, instead of six out of seven. We are sitting as an eight member board. We do have conflicts with the other members who can not serve based upon on their membership with the yacht club.**

**The following was marked into evidence:**

**A-1 Application, dated August 27, 2012**

**A-2 Plot Plan, prepared by Jason L. Fichter, dated August 16, 2012**

**A-3 Architectural Plans, prepared by Aquatecture Associates, Inc, titled Additions and Alterations for the Bay Head Yacht Club, dated August 29, 2012**

**A-4 Resolution of the Borough of Bay Head Planning Board, Bay Head Yacht Club, dated May 19, 1999**

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

**A-6 E-mail from John Paul Doyle, Esquire, dated September 6, 2012 requesting a waiver from providing an updated survey.**

**A-7 Review letter from the Planning Board Engineer, dated September 12, 2012**

**A-8 Proof of Service**

**A-9 Proof of Publication**

**A-10 Colored rendering of the north elevation**

**A-11 Tax map of subject property and area**

**A-12 Colored rendering of the site**

**A-13 Aerial photo of subject property and surrounding area**

**Mr. Shivers, 68 Egbert Street, was sworn in by Mr. Zabarsky.**

**Mr. Shivers stated that he is a Bay Head resident and a member of the Bay Head Yacht Club. He has been a member of the yacht club since 1991. He is currently serving as Fleet Captain of the yacht club which is one of the clubs' officers. He is a member of the Executive Committee of the Board of Trustees, a member of the Board of Trustees and serves on the Long Term Planning Committee.**

**Mr. Shivers explained the thought process that led to the application being made tonight. The Bay Head campus is quite large. There are a number of buildings on the facility. The principal use building is the main club house. The Merrick Center was added in the late 1990's to supplement use of the existing campus as a junior sailing club house and other activities associated with the yacht club. The Dale Building was added to the property as a subdivision in 2002-2003.**

**Mr. Shivers confirmed to Mr. Doyle that the principal building is the main club house. The club house is closed form January 1<sup>st</sup> through mid March. The club house is open for about a 75 day period, principally July and August. Usage of the building goes down significantly during the shoulder season. The Merrick Building is an efficient, economic way for use in that shoulder season.**

**Mr. Shivers stated that they have always been sensitive to the neighbors. They want to be good neighbors. Nothing in this application will change that.**

**Ms. Frizzell stated in the original resolution it restricted the building not be used at night.**

**Mr. Shivers stated their intention is to have as much flexibility as possible operating the club in order to be effective and cost efficient. If they were to have dining in the Merrick Center typically on the shoulder season they have five evenings of dining, Wednesday through Sunday. The hours of dining are from 6:00p.m. - 8:00p.m. for ordering entrees. Some members may be there until 9:00p.m. They also serve lunch three days a week during the shoulder season. The main building is very large, 30,000 sq. ft. It requires heating and a lot of electricity to run that. So when they have the smaller number of people who typically dine at the club during the shoulder season, it would be attractive to use a building that can handle that more efficiently.**

**Mr. Furze stated the plans say “Warming Kitchen.”**

**Mr. Shivers confirmed to Mr. Furze that the food will come from two sources, from the kitchen in the main club house or from outside catering. A warming kitchen is used for parts of food preparation, last minute preparation and things like that.**

**Mr. Doyle confirmed the capacity of the main club house is 200 downstairs in the main dining room and 180 upstairs in the Ballroom and Barnegat room, 380 total.**

**Mr. Shivers confirmed to Ms. Frizzell that the liquor license would cover the Merrick Building. The use of the liquor license would be to support dining, cocktail parties and that sort of thing.**

**Mr. Anelchenko, licensed architect, was sworn in by Mr. Zabarsky.**

**Mr. Anelchenko stated to Mr. Doyle, as part of this application, there will be no changes to the Dale Building. The Merrick Building was designed by Mr. Anelchenko’s firm in the late 1990’s. It is a one story building, 2,100 sq. ft. The largest space, 1,500 sq. ft. is called the youth club house area. The balance, 600 sq. ft. is taken up by bathrooms and a small office. They were asked to evaluate the building and see how it may work in terms of supporting a food service.**

**Mr. Anelchenko stated their solution was to create a small vestibule, less than 200 sq. ft., on the north side of the building. This is shown on sheet A-2 of exhibit A-3. This will provide an interior access from the dining space or from the meeting room into the bathroom area where currently none exist. They were able to maintain the outdoor porch walkway by bumping that out to the south. This allowed them to maintain the ADA compliance access which is provided by the ramp located at the east side of the building. The existing office, 18.4 ft. x 11 ft., is labeled “warming kitchen”. This space would not be for cooking the food, but facilitate foods that are delivered there either premade or partially made and could be warmed up. There would be an ice machine, under the counter refrigeration, convection electric oven, hand sink, utility sink for cleaning and a dishwasher. They understand they will have to meet the Ocean County Board of Health requirements for food preparation. They believe they would be able to do that. There is no exterior entrance to that kitchen area from the outside as requested by the Bay Head Yacht Club. The only entrance into that kitchen is from the dining room. There is currently heating and air conditioning for the office and the bathrooms. They would need to supply heat for that dining area. They would either add to the existing condenser or provide an additional condenser and add an**

**additional heating unit that would occur above the low ceiling space above the warming kitchen and the bathrooms. They will not be increasing the occupancy load.**

**Mr. Alenchenko confirmed to Mr. Convey that food waste would be discarded by refuse cans and taken to the dumpster. It would have to be taken out through the vestibule or through the banquet space.**

**Mr. Fichter, licensed Engineer and Professional Planner, was sworn in by Mr. Zabarsky.**

**Mr. Fichter stated exhibit A-12 is a copy of the plot plan submitted with the application. Color has been added to call the Boards' attention to the aspects of the site.**

**Mr. Doyle stated the line running north to south running through the Merrick Building is the zone boundary.**

**Mr. Fichter stated, that on exhibit A-12, they have focused in on one piece of property, Block 55, Lot 9. It is part of the Bay Head Yacht Club property. The property is split zones. Running in a north, south direction parallel to Lake Ave. is the zone boundary. Two thirds of the property is in B-2 zone. One third of the property is in the R-50 zone.**

**Mr. Doyle stated the only changes in the buildings that are a part of this application is a 182 sq. ft. addition to the porch of the Merrick Building and a 187 sq. ft. building addition.**

**Mr. Fichter stated the utilities will be the same. There will be no changes in the parking or traffic. This is a small addition to a building that is already developed.**

**Mr. Doyle stated there is an existing bulk variance in that the front building on Lake Ave. that does not meet the setback, in fact, goes over the right of way line.**

**Mr. Fichter stated that is correct. The front building along Lake Ave. is an existing building that has been there for a really long time. It is right on the property line. It is an existing non conformity. No changes are proposed. It is called the Dock Masters Building and used primarily for storage and equipment.**

**The existing coverage on that property is 86.7%. Proposed with the small building addition on the Merrick Building the coverage would be 87%. The B-2 zone allows 75%. If you took in the whole campus it would be under the 75%.**

**Mr. Doyle stated the use variance is only because of the zone split. It is a unique circumstance that warrants the granting of the use variance.**

**Mr. Fichter agreed.**

**Mr. Fichter stated that the Bay Head Yacht Club has been around for along time. The community views it as a yacht club as a whole. The site is already perceived as a B-2 use. It really operates under the B-2 zone.**

**Mr. Fichter stated the expansion of the building is within the R-50 zone portion of the property. That is the technicality that brings this application before the Board. He feels there was an unintentional limitation in the 1999 resolution that this building would be used**

for the Junior Sailing Club operations. That is not their true intention. What they are looking to do is to be able to use this building for uses that are otherwise permitted in the B-2 zone, which is really the Bay Head Yacht Club operations. So that is the premise for the D-2 variance. He evaluated the purposes of planning and he sees three that would be advanced by this application. First, the building is within the height limitations. It is within the setbacks for either zone no matter how you evaluate it. It is also a very minimal expansion to the building. The second purpose of planning that he feels is advanced is the application promotes a desirable visual environment through creative development techniques. It is a picturesque place. The architectural plans for the small addition, fits right into that. They proposed the minimal that they needed to make this building work for those type of functions. Mr. Fitcher addressed the third purpose of planning he feels is met. He stated that boating is a huge industry along the New Jersey coast. By eliminating any restriction on use to this property and permitting this building to be used for anything that allows full enjoyment for all the members, New Jersey citizens as purpose of planning talks about. It utilizes existing space for this enjoyment and also B-2 zones are water related. Being that this is on the waterfront, again, it allows the members the enjoyment of that location.

Mr. Fitcher stated he does not believe that the granting of this use variance will cause any substantial detriment to the zoning plan, zoning ordinance or public good. This is going to be transparent to the public. The building is still going to be aesthetically pleasing. Parking and traffic are not expected to change.

Mr. Doyle stated that if an approval were granted they understand it would be subject to obtaining other governmental approvals needed including CAFRA, a permit or NFA for example.

Mr. Furze opened the meeting for public discussion.

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

Mr. Petrillo: He has no problem with this application at all

Mr. Tubbs: He agrees with Bart. He is curious why there would be no egress in the kitchen, however everything else looks great as presented.

Mr. Furze: He has no objections

Mr. Convey: He has no objections. He would like to comment how it was so professionally presented.

Ms. Wintersteen: She has a question on the application. It has an attachment A & B. In attachment A, you are saying you want to change uses for both the Merrick and the Dale Building. She has not heard the Dale Building mentioned.

Mr. Doyle stated he basically wanted to report to the Board that they would continue the occasional events of a non storage nature that happen here. The Dale Building is the largest building under roof so for instance the annual meeting is held there. It is open and unheated so it is tough in the winter. It is not air conditioned so it is tough in the summer. There is no major change to the Dale Building where storage would be.

Mr. Zabarsky stated he has as a condition that in regard to both of these buildings the uses would be as permitted and associated with the yacht club use. That was made very specific by Mr. Shivers. Mr. Zabarsky has that as a condition.

**Mr. Harrington: He is in favor.**

**Ms. Frizzell asked if parking was going to be an issue. There was not as much of a need for parking for a junior sailing program, but for a dining facility you would need 20 spaces for a few hours.**

**Mr. Fitcher confirmed with Ms. Frizzell that based on the 1999 Resolution there is ample parking throughout this site to support this use. We are talking about parking on the entire yacht club property. If you are to run short on parking there is a foot bridge to a large area with a lot of parking. You have the main yacht club which has its own parking. There is plenty of parking.**

**Ms. Frizzell asked Mr. Fitcher which neighbors would be affected by this application.**

**Mr. Fitcher stated Lot 10, Lot 6 and Lot 8 are properties along Lake Ave. He does not anticipate any change from what is happening now in reference to noise.**

**Mr. Petrillo stated, concerning the Dale building, he thinks things need to be addressed like fire codes, ADA, building codes, that he did not see addressed. We need some information on how these are going to be addressed before this use change is granted.**

**Mr. Doyle stated he does not see how they are seeking a use change from its existing use as part of a yacht club.**

**Mr. Petrillo stated the Dale Building is for Storage only.**

**Mr. Zabarsky stated that what is before the Board is Lot 9. The Dale Building is not on Lot 9. So the only thing he would suggest is that your approval is for the Merrick Building which is located on Lot 9 and for no adjudication on the Dale Building. If the code enforcement/zoning officer feels it is being used not in compliance with any prior resolutions or permitted uses then he can act accordingly. The applicant mentioned the Dale Building, but there has been no testimony on that. Sometimes they have a gathering in there for some meeting or two which is not what its original use is, its storage. Unless, Mr. Doyle wants to go back and open up testimony and try to get into this. The property in front of us is really isolated to, as the experts testified, Block 55, Lot 9 and the Merrick Building. It sounds like the Board is not prepared to make any vote with regard to the Dale Building and on how it is being used and if whether it is in conformance with prior resolutions or approvals.**

**Mr. Doyle stated the Dale Building is fully within the B-2 zone. So it is not a use variance that is involved. With that it is on a separate lot, tax lot, then the Merrick Building. The Dale Building, to his knowledge, has not been the subject of any prior Planning Board approval that specifically limited its use. They do not intend to use it any differently then they have in the past for yacht club activities as they are permitted. They seek no approval to do anything to, with, in the Dale Building differently then they have been. So with that said, they would ask the Board to vote on the application which is really all about the Merrick Building.**

**Mr. Zabarsky stated that he understands where Mr. Petrillo is coming from. Mr. Petrillo's understanding is the only use ever permitted in the Dale Building is boat storage. If there is going to be some type of human occupancy then he is going to get involved with fire ratings,**

**bathrooms on all kind of things. We are going to leave it at that. There is going to be no approval from this Board on this application for any use on the Dale Building. That will be made clear in the resolution. It is as simple as that.**

**Mr. Doyle stated he understands Mr. Zabarsky's last statement and that is the basis they will proceed on.**

**There was a motion by Mr. Convey seconded by Ms. Wintersteen to approve the application with all its conditions.**

**Roll Call:**

**YEAHS: Furze, Frizzell, Petrillo, Harrington, Tubbs, Convey, Wintersteen, Applegate**

**NAYS: None**

**The following voucher was reviewed by Mr. Kellogg and approved by the Board:**

**Maser/28 Karge St. \$587.50**

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

**Respectfully Submitted,**

**Laura Tuzzolino  
Board Clerk**