

The meeting of the Bay Head Planning Board was held on Tuesday, February 12, 2013 at the Point Pleasant Beach Municipal Complex, Council Chambers 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, Kathleen Tell, Peter Harrington, William Curtis, Brian Magory, Bart Petrillo, Patricia Wojcik, Edward Convey, Kathleen Wintersteen, Robert Hein, Fred Applegate
Engineer – Susan Brasefield, Attorney – Steven Zabarsky, Esq.
Absent: Verity Frizzell, William Tubbs**

The January 24, 2013 minutes were approved on a motion by Mr. Petrillo, seconded by Mr. Magory with all in favor.

Roll Call:

YEAHS: Furze, Tell, Harrington, Magory, Petrillo, Wojcik, Convey, Wintersteen, Hein, Applegate

NAYS: None

Mr. Furze stated the Board had for review the application of Mr. & Mrs. Hinds, 449 Holly Avenue, Bay Head, NJ a/k/a Block 43.01, Lot 19.

Ms. Tell recused herself from the application.

Mr. William Gage stated after filing for this application certain information and documents came to his attention which upon his review he felt were highly pertinent to the application and that the Board should see this information. It was after the ten day statutory period that these came to light so they would not be admissible this evening. Mr. Gage requested this application be adjourned to the next scheduled hearing.

Mr. Gage stated the deed restrictions were quite nebulous. It is the other information that is of most importance.

The Board adjourned the application to the next scheduled hearing of March 18, 2013.

Mr. Zabarsky confirmed that Mr. Gage will re-notice for the application. There will be a whole new notice for this application.

Mr. Furze opened the meeting for public discussion.

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

Mr. Zabarsky stated that there was no need to go into Executive Session, that there was just an update for the Mauro case. Mr. Zabarsky did have the oral argument in front of the Supreme Court on Monday, November 5, 2012. The argument went fairly well. The framed issue on the public website was whether the Board at that point sitting as a zoning board had the authority and jurisdiction to determine drainage issues in this particular C Variance issue because the drainage issue on a site is actually in our municipal land use law under the Planning Board powers for subdivision and site plan. There was no case that they could find in New Jersey that talks about, in your capacity as a Planning Board or a Zoning Board, adjudicating a C Variance application for the construction in a residential dwelling where you would be able to bring in issues of drainage, as part of your thought process and the applicant's burden of proof, which he thought was very appropriate, the negative criteria being detrimental to the public good or hurting the general welfare or being detrimental to the master plan or the zoning ordinance. The judge, at the lower level, determined that we have the authority to go into the issue of drainage. When he affirmed us, waiting for Mr. Mauro to come back, he was basically saying we need more information on drainage. That was the issue we really focused on at the trial level. The Supreme Court was that issue. Mr. Zabarsky stated he had a feeling they may be giving a decision that will be published that the zoning board has the authority to determine drainage issues under the negative criteria of the C Variance or a D Variance for that matter. They did ask about some issues with the fire fighters. Could they fight this fire as they wanted to or were they saying we are fire fighters and they would fight any fire they would have to fight, but this is not a great situation to fight a fire. They gave no clue on when they are going to give a decision.

There was a motion by Ms. Tell seconded by Ms. Wintersteen to approve the vouchers with all in favor.

Maser/859 Main Ave.	\$450.00
Maser/Meeting and Public Attendance	\$300.00
Zabarsky/509 West Lake Ave.	\$345.00

There being no further business the meeting was adjourned.

Respectfully Submitted,

**Laura Tuzzolino
Board Clerk**

