

Bay Head Planning Board
December 17, 2014

The meeting of the Bay Head Planning Board was held on Wednesday, December 17, 2014 at 7:30 PM.

Ms. Frizzell 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 the Borough of Bay Head and filed with the Bay Head Borough Clerk."

Roll Call: Verity Frizzell, Edward Convey, William Curtis, Bart Petrillo, Patricia Wojcik, Robert Hein, John Henry Morris, Thomas Charlton

Absent: William Furze, Kathleen Tell, Kathleen Wintersteen, William Tubbs, Frederick Applegate

The April, 2014 Minutes were approved on a motion by Bart Petrillo and seconded by Edward Convey, with all in favor.

The May, 2014 Minutes were approved on a motion by Edward Convey and seconded by Bart Petrillo, with all in favor.

The June, 2014 Minutes were approved on a motion by John Henry Morris and seconded by Robert Hein, with all in favor.

Ms. Tell arrived at the meeting.

Ms. Frizzell stated the Board had for review the **Resolution** of Atlantic Pier Co., Inc., 72 Bridge Avenue, a/k/a Block 25, Lot 4 which was approved at the meeting of November 19, 2014. A motion was made by Edward Convey and seconded by John Henry Morris to approve the Resolution as amended. Roll call: Edward Convey, John Henry Morris, Verity Frizzell, Bart Petrillo. Absent: William Furze, Kathleen Wintersteen, Kathleen Tell

Ms. Frizzell stated we have three applications on the agenda this evening. A motion was made by Bart Petrillo and seconded by William Curtis to move the application of Gina Davis to first, with all in favor. Therefore, first is the **application** of Gina M. Davis, 380 Western Avenue, a/k/a Block 7, Lot 1.

Gina Marie Davis, 380 Western Avenue, Bay Head, was sworn in by Mr. Zabarsky.

The following items were marked into evidence:

- A-1 Development application
- A-2 Survey
- A-3 Minor subdivision plan
- A-4 Memorializing Resolution from previous application #2003-02 dated 5/21/03
- A-5 Review letter from Board engineer dated 12/11/14

- A-6 Hearing Notice Affidavit
- A-7 Affidavit of Publication

Ms. Davis testified that her existing single-family home was ruined by Hurricane Sandy, and that 2 and one-half months later, her husband passed away. Ms. Davis further testified that previously, pursuant to Application #2003-02, this Board granted minor subdivision approval to create two new lots as evidenced by the Resolution she provided with her application. She stated that because the map was never signed and filed, the subdivision approval has expired.

Ms. Davis further testified that the two new lots to be created will conform with all the requirements of the Borough of Bay Head Land Use Ordinance, with each having a width of 62.5 feet and lot area in excess of 5,000 square feet. Ms. Davis stated she understood her existing house will be demolished as part of the subdivision approval, and that she intends to sell one lot and use the proceeds to build a house for her family on the remaining lot.

Ms. Davis testified there is a wetland designation on her property, and she understands she will have to apply to all the necessary agencies to receive any required permits and/or waivers with regard to the subdivision and construction of one single-family dwelling on each of the 2 newly created lots. Ms. Davis requested a waiver with regard to the submission of architectural plans and location of driveways and utilities.

There being no public comment, a motion was made by William Curtis and seconded by Edward Convey, to approve the application. Roll call: YEAS: William Curtis, Edward Convey, Verity Frizzell, Bart Petrillo, Patricia Wojcik, Robert Hein, John Henry Morris, Thomas Charlton.

Ms. Frizzell stated next up is the continuation of the **application** of Harry and Pauline D. Demas, 309 Main Avenue, a/k/a Block 33, Lot 3.

William Gage, Esq., Lake Avenue, Bay Head, NJ, attorney for the applicants came forth. He stated that as a recap from the hearing on November 5, 2014, applicants are proposing to install an in-ground swimming pool, although the property currently has an impervious, non-conforming condition insofar as coverage is concerned. He stated the pool counts towards impervious coverage, however, there will be no increase in impervious coverage due to the fact that a corresponding amount, or greater, of pavers already existing on the property shall be removed.

Mr. Gage indicated that at the November 5, 2014 meeting, several issues arose. Firstly, it was brought to everyone's attention there is a concrete wall along the rear property line and along a small portion of the easternmost sections of the north and south side property lines. Mr. Gage indicated these increase impervious as well as building coverage, and were not calculated into the calculations at the last hearing, and that therefore, Mr. Cannon has updated his survey. Secondly, Mr. Gage indicated several of the Board members were uncomfortable with the proximity of the swimming pool and pool deck to the rear property line. Mr. Gage stated it has since been moved several feet west so that there will be a 3 foot setback between the decking of the pool and the rear yard property line. Third, in the survey for the pool plan provided at the last meeting, several issues were left un-described: The setback to the north of the house has been

calculated into the plans and is conforming as far as to the house is concerned; the calculations to the air conditioning units also on the north side of the house have been inserted; the setback to the garage has been calculated, and the representation of a deck adjacent to the garage has also been included.

Mr. Gage stated that as a result of updated plans, there are several non-conforming conditions, and went on to state them, including the building coverage of 44.31% where 35% is the maximum permitted, and a lot coverage of 63.65% where 50% is the maximum permitted. He stated if this application is approved and this development completed, none of the non-conforming conditions will be exacerbated, the impervious coverage will be slightly decreased to 63% because applicant is taking up pavers and can't get down to the exact square inch, but it will be less than what is currently on the property.

The following items were marked into evidence:

- A-13 Height certification letter from Michael T. Cannon, PE & LS dated 11/30/14
- A-14 Revised survey dated 12/1/14
- A-15 Revised pool variance plan dated 12/1/14
- A-16 Review letter from Board Engineer dated 12/11/14

Mr. Zabarsky consulted his notes and indicated at the original hearing on November 5, 2014 we had Mr. Furze, Ms. Frizzell, Ms. Tell, Mayor Curtis, Ms. Wojcik, Mr. Hein, Ms. Wintersteen, Mr. Tubbs, Mr. Morris, Mr. Charlton and Mr. Applegate. Mr. Petrillo and Mr. Convey were asked if they had listened to the tape from that meeting and seeing as how they did not, they were advised they could participate but not vote. Additionally, it was noted that only 6 members were eligible to vote this evening as Mr. Furze, Ms. Tell, Ms. Wintersteen, Mr. Tubbs and Mr. Applegate were absent. Mr. Gage was advised five is a quorum so applicant will need 4 out of 6 members to gain approval of their application, and after consulting with his clients, Mr. Gage advised applicants wished to proceed.

Michael T. Cannon, licensed Planner, P.E. & L.S., The Cannon Group, P.C., Brick, N.J. was sworn in as an expert witness, and explained his updated paperwork which includes missing dimensions, and more specifically, the setbacks to the pool and walkway have been added. The pool will be six feet from the rear property line, 6 feet from the side property line, there will be a 3 foot deck around the pool and that will be 3 feet off of each the rear property line and side property line. He went on to testify they had added additional dimensions and tweaked the numbers as far as coverage goes. He mentioned the concrete wall around the rear of the property, stating he had calculated the coverage of that wall to be an additional 60 square feet of building coverage, said coverage coming basically on the side walls. Mr. Cannon stated the rear wall is essentially on the adjacent property with only a little being on applicants' property "just to the north". Mr. Cannon further stated the bulk of the 60 square feet of additional coverage is on the side yard.

Mr. Gage, in referring to the testimony at the last hearing regarding how many feet of square footage of pavers were being removed, questioned if there would be an increase in the amount of pavers to account for the concrete wall, and Mr. Cannon agreed and further clarified they had

also shifted the pool and it goes into the paver patio area so they would also be removing those pavers to put the decking down, which will not account towards coverage. Mr. Gage questioned Mr. Cannon if there would be any net increase in impervious coverage, and Mr. Cannon agreed that there would be no net increase.

Mr. Gage then stated that to summarize, this application does not impact any other non-conforming conditions currently existing on the property, will not result in any net increase to the impervious coverage, and will have no impact whatsoever on any of the other non-conforming conditions. Mr. Cannon agreed.

After several questions regarding storage of pool equipment and the number of accessory structures on the property, Ms. Frizzell wanted to clarify they are removing the section of pavers to the east of the house, to the north of the deck, and a portion where the pool decking covers what were the pavers, and the net change is negative as to impervious coverage; Mr. Cannon agreed.

There being no comments from the audience, and after polling members of the Board, a motion was made by William Curtis and seconded by Thomas Charlton to approve the application. Roll Call: YEAS: William Curtis, Thomas Charlton, Verity Frizzell, Patricia Wojcik, Robert Hein, John Henry Morris.

Ms. Frizzell stated next up is the continuation of the **application** of Mark & Holly Fedorcik, 859 East Avenue, a/k/a Block 81, Lot 9.

Christopher B. Healy, Esquire, from the firm of Bathgate, Wegener & Wolf, 1 Airport Road, Lakewood, NJ, attorney for applicants, came forth. Mr. Healy stated that the applicants are seeking bulk variance relief. He recapped the October 22, 2014 meeting; how applicants were asked to re-notice because of issues particular with their request for relief from the front yard setback which was not properly noticed. Mr. Healy indicated they have since provided a revised application to the revised plans, and to start anew.

Mr. Zabarsky advised we have 8 members here this evening, that we are a full 9 member Board so normally they would need 5 out of 9 members but this evening, they will need 5 out of 8 votes to obtain their variance since we are short a full membership. Mr. Healy stated they were willing to move forward.

The following items were marked into evidence:

- A-1 Revised Development application, #2014-13+A dated 12/5/14
- A-2 Plot plan dated 11/26/14
- A-3 Dune setback map
- A-4 Architectural plans revised 11/5/14
- A-5 Review letter from Board engineer dated 12/11/14
- A-6 Hearing Notice Affidavit
- A-7 Affidavit of Publication
- A-8 Survey dated 2/28/14

Mark Fedorcik, 859 East Avenue, was sworn in by Mr. Zabarsky. Mr. Fedorcik stated he and his wife Holly purchased this residence last January, and have lived in town for almost 7 years. He stated there are 2 purposes of the changes to the plans before the Board; one is to make the house more in line with the Bay Head type of house, a more historic house which fits in with the town's architecture. The other is to make it more family-friendly as they have two young children, in-laws, a lot of extended family members and friends. Mr. Fedorcik testified that after the first meeting two months ago, some neighbors approached him and his wife and they immediately addressed the neighbors' concerns and tried to find a compromise. Mr. Fedorcik stated they made substantial changes with the new plans.

Thereafter, the following people were called as witnesses by the applicant's attorney, and gave their testimony:

Peter D. Dorne, 105 Maple Avenue, Morristown, NJ, and Bridge Avenue, Bay Head, NJ, licensed architect in New Jersey since 1992

Timothy P. Lurie, 149 Yellowbrick Road, Farmingdale, NJ, principal in DW Smith Associates, LLC, Professional Engineer, Professional Planner and Certified Municipal Engineer

After testimony from both expert witnesses, Ms. Frizzell questioned how the lot area was determined, to which Mr. Lurie responded it was taken from the survey from the approximate mean high water line. A discussion ensued and Mr. Lurie and other members of the Board did calculations as to where approximately the mean high water line began. Ms. Frizzell stated this is based upon changes to the land area which may be less than what it once may have been, and that the high water line is basically at the end of the dune. It was ascertained that the survey map was calculated incorrectly.

Mr. Healy thereafter asked to amend the application to seek 2 additional variances - one for maximum building lot coverage, and one for maximum structure lot coverage for maximum building lot coverage. 25% is required and 28% is proposed, and then maximum structure lot coverage, 40% is required and 48% is proposed.

A motion was made by John Henry Morris and seconded by Edward Convey to accept the amendment to include the building lot coverage and structural lot coverage variances, based upon the testimony which now yields a different lot size, for the purposes of area and calculation. All in favor.

The following audience members came forward:

Benjamin Denihan, 845 East Avenue, Bay Head, who objected to the height of the garage;

Bruce Bossidy, 538 West Lake Avenue, Bay Head, representing his wife and her brother who own 875 East Avenue and who feel the house is not in line with the neighbors and has too many extensions;

Barbara Denihan, 845 East Avenue, Bay Head, who objected to the connection of the house to the garage and the raising of the garage.

After a poll of the Board members, Mr. Fedorcik requested a break to confer with his attorney. He then returned with several proposed changes to the plans. Mr. Zabarsky recommended this be adjourned for the evening, and that applicants return with new, revised plans and new calculations. A motion was made by Robert Hein and seconded by William Curtis to adjourn and carry the application to January 21, 2015 with no notice required, with the plans and all updated papers on file with the Board Clerk by Friday, January 9, 2015. All in favor.

Under **Old Business**, due to the late hour the Costa matter is being carried to the January 21, 2015 meeting.

A motion was made by Robert Hein and seconded by Bart Petrillo to approve the **vouchers**. All in favor.

The meeting adjourned on a motion by Edward Convey and seconded by John Henry Morris. All in favor.

Respectfully submitted,

Claire S. Hense