

Bay Head Planning Board
May 21, 2014

The meeting of the Bay Head Planning Board was held on Wednesday, May 21, 2014 at 7:30 PM.

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

Roll Call: William Furze, Verity Frizzell, Edward Convey, William Curtis, Bart Petrillo, Robert Hein, Kathleen Wintersteen, William Tubbs, John Henry Morris, Thomas Charlton, Frederick Applegate

Absent: Kathleen Tell, Patricia Wojcik

The February, 2014 Minutes were approved on a motion by Verity Frizzell and seconded by Robert Hein, with all in favor.

Mr. Furze stated the Board had for review the **Resolution** of John G. & Mary B. Lindsay (by their son William Lindsay), 554 Lake Avenue, a/k/a Block 54, Lot 3 which was approved at the meeting of April 16, 2014. A motion was made by Bart Petrillo and seconded by Kathleen Wintersteen to approve the Resolution. Roll call:

YEAS: Bart Petrillo, Kathleen Wintersteen, William Furze, Edward Convey, Robert Hein, Thomas Charlton

Mr. Furze stated the Board had for review three (3) applications this evening.

First is the continuance of the **application** of Lee Kellogg Sadrian, 513 East Avenue, a/k/a Block 65, Lot 3.

William Curtis and Robert Hein were recused as they are Class I and Class III (respectively) members, and because this is a use variance.

John E. Ursin, Esquire, attorney for applicant, came forth. He stated that the applicant is returning from last month with modifications to the plan. They are eliminating the garage and adding no living space. The amenity they are looking for is the pool. As originally proposed, there was a strong preference to keep the pool up towards the front of the house on the side for the safety of the children. They have re-worked the decks. They are looking for the above grade to be 8 feet from the side yard which allows the house to be kept in the same place. They are seeking a 2 foot variance on the pool structure above grade. At grade, there are 2 more feet of drains because this is an infinity pool, in that the water comes over the side.

The following items were marked into evidence:

- A-12 Revised plot plan from Lindstrom, Diessner & Carr dated April 30, 2014
- A-13 Revised plans from Barlo & Associates dated May 2, 2014

A-14 Review letter from Board Engineer dated May 15, 2014

A-15 Large poster board in black and white of renovations and additions to residence by Barlo & Associates dated May 15, 2014

Arthur Warren Nordfors, licensed architect in the State of New Jersey, 179 Ocean Avenue, Island Heights, NJ, was sworn in by Mr. Zabarsky.

Mr. Nordfors testified that the pool on the north side of the structure will be 6 feet from the side yard property line rather than 2.9 feet, based upon changes to the plan filed with the Board. The porch and walkway around the pool will be removed. The east porch stairway has been moved to behind the dune and therefore there will be a .5 setback from the dune. The changes depict that the house will be 2.5 stories. Further, Mr. Nordfors testified that the house could be raised 2 feet higher and no variances will be necessary under the current laws of the State of New Jersey due to Superstorm Sandy.

Charles E. Lindstrom, professional engineer & planner in the State of New Jersey, 136 Drum Point Road, Brick, NJ was sworn in by Mr. Zabarsky.

Mr. Lindstrom testified that the applicant has obtained a CAFRA permit but the application to CAFRA will have to be modified due to the changes to the plan. He further stated the swimming pool will be 5 feet deep for the entire length of the pool and that the entire lower level, which was habitable space, will be used only for parking and storage.

Mr. Furze opened the meeting to public comment.

Peter R. Kellogg, 39 Stewart Road, Short Hills, was sworn in by Mr. Zabarsky.

Mr. Kellogg stated he is the father for the applicant. He states the applicant is a decorator, the house is a "great historic house" and he is happy to see it is being renovated rather than demolished.

Mr. Zabarsky advised counsel there were cases that discuss the issue of bifurcating a vote when you have both a C and D. Mr. Ursin asked for a bifurcated vote.

With regard to the D variance related solely to the height of the house, a motion was made by Verity Frizzell and seconded by Kathleen Wintersteen, to approve same.

Roll call: YEAS: Verity Frizzell, Kathleen Wintersteen, William Furze, Edward Convey, Bart Petrillo, William Tubbs, Thomas Charlton, Frederick Applegate.

With regard to the C variance related to the side setback as to the pool and the front yard setback with regard to the landward edge of the dune, a motion was made by Kathleen Wintersteen and seconded by Edward Convey to approve same.

Roll call:

YEAS: Kathleen Wintersteen, Edward Convey, William Furze, Verity Frizzell, William Tubbs, Thomas Charlton

NAYS: Bart Petrillo, Frederick Applegate

Mr. Furze stated the Board had for review the continuance of the **application** of Lambro and Helen Demetriades, 646 Main Avenue, a/k/a Block 59, Lot 28.

Verity Frizzell recused herself from the application.

Daniel Popovitch, Esquire, attorney for the applicant Helen Demetriades, came forth.

Mr. Popovitch stated they have returned with a revised plot plan reducing the total structural coverage so that it is now within the ordinance, and they are seeking a variance for the building coverage, i.e., the addition of the garage and deck.

The following items were marked into evidence:

A-9 Revised plot plan dated May 2, 2014

A-10 Review letter from Board engineer dated May 15, 2014

Charles E. Lindstrom, professional engineer & planner in the State of New Jersey, 136 Drum Point Road, Brick, NJ was sworn in by Mr. Zabarsky.

Mr. Lindstrom testified that the plans were modified to provide for lot coverage of 48.4% and therefore no variance is being requested. He stated the building coverage is 42.4% and therefore a variance is being requested for the 35% maximum allowable building coverage. He testified the deck “matches the first floor of the dwelling”. The deck has separated slats which will allow rain to pour through the deck and therefore permeate underneath the deck.

Mr. Lindstrom further testified there is no habitable space in the half story above the three (3) floors, the house is 3.5 stories as a pre-existing, non-conforming condition. He stated the variances being requested will not be detrimental to the zone plan or zoning ordinance. He further stated that the impervious coverage has been minimized by a modification to the plan.

Mr. Lindstrom then testified that the property to the south, adjacent to applicant’s structure, has “much more building coverage” by his eye, even though he did not formally measure or survey the condition.

Helen Demetriades, 646 Main Avenue, was sworn in.

Ms. Demetriades testified they have eliminated the outdoor showers, eliminated pavers around the pool, and that they are not going to do any improvements to the third story bedrooms and bathrooms, which were pre-existing. She stated she is set on the 2 car garage as well as the deck.

There being no public comment, the Board was polled. Thereafter, a motion was made by Kathleen Wintersteen and seconded by Edward Convey to approve the application.

Roll call: YEAS: Kathleen Wintersteen, Edward Convey, William Curtis, Bart Petrillo, William Tubbs, Thomas Charlton.

NAYS: William Furze, Robert Hein, Frederick Applegate

Mr. Furze stated the board had for review the **application** of 3 of a Kind, LLC, 530 Main Avenue, a/k/a Block 57, Lot 17.

William Curtis and Robert Hein were recused as they are Class I and Class III (respectively) members, and because this includes a use variance.

The following items were marked into evidence:

- A-1 Application with attachments, including survey, elevation certificate, previous memorializing Resolutions and review letters
- A-2 Review letter from Board engineer
- A-3 Hearing notice affidavit
- A-4 Affidavit of Publication
- A-5 Affidavit of Service

Roberta A. Burcz, Esquire, 1229 Bay Avenue, Point Pleasant, attorney for the applicant, came forth

Ms. Burcz stated the applicant is applying for a special reasons variance to provide for a portable grill as well as 3 portable heat lamps for the outdoor seating area on the front patio for the existing restaurant, Theresa's South, due to the public demand for outdoor dining. This would be for the months of May through October. The grill would be for lunch time only, 11:30 a.m. – 2:30 p.m.

Richard A. O'Connor, 854 Main Avenue, was sworn in by Mr. Zabarsky.

Mr. O'Connor testified he is a principal of 3 of A Kind, LLC., he is the owner of the restaurant for 6 years, and is familiar with the operation of the restaurant which he visits daily. He indicated the restaurant was open for the summer of 2013, is open year-round, 5 days a week, and he further stated that the construction on Route 35 has been hard on everyone.

Mr. O'Connor testified there is a demand for outdoor dining from his patrons who enjoy sitting on the patio fronting Main Avenue. Wait time can be up to 1 hour in the summer for patrons wishing to dine outside. He indicated that in the evenings, it tends to be cooler and therefore, the heat lamps would provide a convenience for the outdoor diners.

A-6 was marked into evidence at the request of Ms. Burcz. It is 2 pages of handwritten drawings by Mr. O'Connor depicting the location of the grill and location of the heaters on the survey map.

Mr. O'Connor further went on to testify he proposes to use three (3) 7.5 feet tall portable propane heat lamps from May through October. The lamps and propane gas tanks will be stored off site when not in use. He then withdrew his application for use of a grill on the patio. Mr. Furze opened the meeting to public comment.

Sherrerd Urner, 42 Mount Street, was sworn in by Mr. Zabarsky. Ms. Urner stated she has no problem with the heaters on the front patio, but does have a problem with the propane tanks being removed late at night. She likes the idea of having heaters to increase the comfort of the diners, but doesn't like the outside grill idea and has concerns with traffic and safety.

Stephen Waterbury, 26 Mount Street, was sworn in by Mr. Zabarsky. Mr. Waterbury concurred with Ms. Urner; he doesn't want the grill and feels it will cause odor pollution.

James Urner, 42 Mount Street, was sworn in by Mr. Zabarsky. He reiterated about the heaters. He doesn't feel the propane should be stored close to his home. Insofar as the grill is concerned, he stated the applicant has a full kitchen in the restaurant and can cook there.

Mr. Furze indicated propane is a flammable gas. He stated heaters are an attractive feature so long as they don't impair egress.

Mr. O'Connor withdrew his application for use of a grill on the patio. He conceded the propane tanks would be removed every night from the property, would only run from May 1 through October 31, and would only be in use when business is open. He agreed that if the tanks cannot be removed from the lamps themselves, then the lamps would be removed from the site every evening. Conversely, if the tanks are removable, the lamps may remain on the premises from May 1 through October 31 every year.

A motion was made by Verity Frizzell and seconded by Frederick Applegate, to approve the application as conditioned. Roll call: YEAS: Verity Frizzell, Frederick Applegate, William Furze, Edward Convey, Bart Petrillo, Kathleen Wintersteen, William Tubbs, John Henry Morris, Thomas Charlton.

Recused: William Curtis, Robert Hein

Mr. Furze brought up **New Business**.

He stated that at the last meeting, Mr. Hein presented to him some documentation from Chief Todisco, Bay Head Fire Department, asking the Board to look into the heights of new buildings and the possibility of residential sprinklers, which is not under the jurisdiction of this Board. That is handled by the DCA. From a property maintenance perspective, trees and shrubs need to be removed in order to get the fire trucks down the aisles to fight fires. Mr. Applegate indicated the town just purchased a new 77 foot aerial truck with a 62 foot operating range. This should aid in fighting fires in the larger, taller houses.

There was also discussed the possibility of needing to have more frequent meetings. Mr. Zabarsky suggested the possibility of advertising and publishing for the first and third Wednesdays of the month, filling up the third Wednesday, and leaving the first available should there be many applications.

There was discussion about getting the packets out sooner to the members. Mr. Zabarsky said by Statute, the documents need to be in to the Board secretary at least ten days prior to the hearing date and that the Board engineer dictates the schedule. The Board engineer, Susan Brasefield,

said our Ordinance says she has two weeks to review for completion, once received. Mr. Furze suggested if there is a wave of applications and they are not complete, the applicants are not ready to come before the Board. Mr. Zabarsky suggested Ms. Brasefield, should she find an application that is not complete, should advise them it is not complete and send a list of things they need to provide before she can do so. Ms. Brasefield indicated the biggest problems are the lack of a survey and the height certifications; many applicants ask for a waiver of a current survey. Mr. Zabarsky said the State Municipal Land Use Law is we can go up to 45 days before we are obligated to deem it complete, and it is not a hardship to require a current survey. To not have a current survey would be a mistake. He would also like to see the adjacent properties, the structures on the adjacent properties, and the measurements from the adjacent properties to applicants' property. We would need to send a letter from the Planning Board recommending a change to Ordinance 147-44 to provide for the Municipal Land Use statutory time provision of 45 days before an application is deemed complete, or in that time frame, a letter of deficiencies to be submitted in order to have the application deemed complete. We can also suggest what we would like to be included in the checklist requirements.

Mr. Furze said the Mayor asked to be filled in on the remainder of our business, and he will inform him of this discussion. Mr. Zabarsky stated the Board needs to get together to formulate a letter with the requirements we would like, and suggested circulating e-mails so we could vote on it at the next meeting under Old Business

Mr. Furze brought up lot coverage, coverage by structure. He stated that in summary, building coverage is measured to the outside face of the wall but in the absence of a wall, you include the overhang. There was a discussion on same, as well as about storm water management.

Andy Brown, a local contractor, asked the Board to look into how occupants are getting into and out of their newly elevated homes, solely from a safety point of view. He was advised it has nothing to do with the Board, it comes under the building code.

Mr. Petrillo asked if a person hypothetically has a non-conforming lot that requires 5,000 sq. feet and they only have 4,800, if they want to build a conforming house on that lot, do they need a variance. Mr. Zabarsky advised yes, because it is an undersized lot and suggested he read *Dalmyra vs. Lacey Board of Adjustment*, his case, stating it is "not a slam-dunk solution".

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

The meeting adjourned on a motion by Verity Frizzell and seconded by Kathleen Wintersteen. All in favor.

Respectfully submitted,

Claire S. Hense