

**Bay Head Planning Board**  
**October 1, 2014**

The meeting of the Bay Head Planning Board was held on Wednesday, October 1, 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, Kathleen Tell, Edward Convey, William Curtis, Robert Hein, William Tubbs, John Henry Morris, Thomas Charlton, Frederick Applegate  
Absent: Bart Petrillo, Patricia Wojcik, Kathleen Wintersteen

Mr. Furze congratulated the Bay Head School, and informed everyone that a past member of the Board, Tom Jones, had passed away.

Mr. Furze stated we have a slight modification to our agenda, and first on the agenda is the **application** of Althea C. Smith, 525 East Avenue, a/k/a Block 65, Lot 7. William Curtis recused himself.

**F. Bradford Batcha, Esq.**, 115 Maple Avenue, Red Bank, NJ, attorney for the applicant Althea Smith, came forth. Mr. Batcha stated the applicant's son, Ted Smith, was there to represent his mother. Mr. Batcha further stated when Mr. Smith first contacted the Borough about building a new house, he was advised by Bart Petrillo, the Zoning Officer, about which variances were needed. Mr. Batcha stated the architect was advised that no side yard setback variance was needed because of a recent change to the ordinance from last year, namely, Ordinance #2013-05. Said Ordinance was passed post-Sandy in an effort, he believes, to assist people needing to re-build houses since a significant amount of homes on the oceanfront are a bit undersized. Mr. Batcha alluded to footnote 6 on the bottom, which he felt is relevant, which states that the existing lots in the R-100 OF zone, which is in what this applicant's property is located, which are less than 75 feet in width shall have combined side yards which are at least 1/3 of the lot width. He stated that is what this application has - they put 11 feet on one side and 5 feet on the other which means they're 16 point whatever, which is one-third.

Mr. Batcha stated the notice sent out for this meeting only requested a height variance, that the applicant did not ask for a side yard setback in the application despite the fact that the Board Engineer's review letter called for a side yard setback. Mr. Batcha indicated he discussed this with Mr. Petrillo, whose position is there is none needed, and he then indicated he discussed this with the Board Engineer, who stated she read it a different way.

Mr. Batcha testified the applicant has a small lot, the family has owned it for 70 years, the applicant Althea Smith is 82 years old and has been displaced from her home for close to two years. He stated they have been working on this application for quite some time and were repeatedly advised there is no side yard setback required. Applicant is "proposing 5.1 feet on one side and 11. something on the other".

Mr. Zabarsky stated we need to address the procedural issue only, not get into the application. Ms. Frizzell stated that the procedural issue is whether we can hear the application seeing as how the applicant did not ask for a side yard variance in her notice.

The Board Engineer, Susan Brasefield, was asked what her analysis was that caused her to conclude the side yard setbacks. Ms. Brasefield stated it didn't say anything about the minimum side yard setback, it only talks about the combined side yard setbacks, and therefore the way she has been interpreting it for all of the applicants is that a ten foot minimum is required, but that the combined is only one-third of the lot width. Ms. Brasefield pointed out this is the first application wherein anyone has raised this question.

Mr. Zabarsky pointed out that footnote 6 specifically says that "Existing lots in the R-100-OF zone which are less than 75 feet in width shall have combined side yards which are at least 1/3 of the lot width" and that is all the footnote says. He went on to clarify this and further stated that the footnote doesn't talk about changing the minimum side yard setback and to take out that argument logically, someone could put their house on the property line and have fifteen feet on the other side and request a permit from the Zoning Officer, stating they don't have to go before the Board because they don't need a variance. Mr. Zabarsky stated you have to look to the intent of the governing body as to what this meant and after calling the Mayor and requesting if he recalled what the intent was, he was referred to Ms. Frizzell who was involved with the discussions at the time the Ordinance was amended. Mr. Zabarsky said Ms. Frizzell indicated it was her recollection that Mr. Petrillo was part of the discussions, and that there was no discussion whatsoever and nothing was put into the Ordinance, that changed the ten foot required minimum side yard setback.

Mr. Zabarsky advised the Board that under the circumstances, if you don't advertise for that type of variance, there is no question under the case law that you don't have jurisdiction or authority to hear the case; and to go forward on an application wherein jurisdiction is improperly made because of the notice requirements, obviously it is a disservice to the Board, the applicant, the municipality and everyone. Mr. Zabarsky stated it is the Board Engineer's, as well as his recommendation after doing research, that the recommendation from the Board's professionals is that the 10 yard side yard setback requirement is there and because it wasn't advertised and there was no public notice, there is no authority or jurisdiction for the Board to hear this application because a side yard variance is necessary.

There was further discussion about the footnote being unclear, as to whether it needs to be deleted, whether it is jurisdictional or it isn't or whether it is as to the combined setbacks.

Mr. Zabarsky stated the footnote directs you to 6 and when you read what it says, it does not say that the ten foot minimum side yard requirement, on each side, is modified. It says only the combined side yard requirement is modified to one-third of the width of the lot; it does not affect the minimum side yard requirement, only the combined side yard requirement. He stated it is black and white in its explanation and is crystal clear, and it has always been interpreted that way.

A motion was made by Kathleen Tell and seconded by Verity Frizzell to have the applicant re-notice and to amend the agenda for the October 15, 2014 meeting at 7 p.m. at the G. Harold Antrim Elementary School, Point Pleasant Beach, to have this application be first on said agenda. Roll call: YEAS: Kathleen Tell, Verity Frizzell, William Furze, Edward Convey, Robert Hein, William Tubbs, John Henry Morris, Thomas Charlton, Frederick Applegate. Recused: William Curtis. Absent: Bart Petrillo, Patricia Wojcik, Kathleen Wintersteen.

Mr. Furze stated the Board had for re-review the **Resolution** of Helen Sanford Brown, 683 Lake Avenue, a/k/a Block 59, Lot 37 which was approved at the meeting of July 16, 2014. Ms. Frizzell requested several small changes as a result of proofreading and grammar, to which Mr. Zabarsky agreed. A motion was made by Kathleen Tell and seconded by William Curtis to approve the amended Resolution. Roll call: YEAS: Kathleen Tell, William Curtis, William Furze, William Tubbs, John Henry Morris, Thomas Charlton.

Mr. Furze stated the Board had for its review a second application this evening, that being the **application** of Turton Realty Associates, LLC, 88 Bridge Avenue, a/k/a Block 22, Lot 1. Verity Frizzell recused herself.

**Christopher J. LaMonica, Esquire**, 44 Princeton Avenue, Brick, NJ, attorney for applicant, came forth. Mr. LaMonica stated that the applicant is seeking to construct a one and one-half story building for use as a real estate office. This was formerly the site of the Diane Turton real estate office, and is currently vacant since the former building was significantly compromised by Superstorm Sandy, causing applicant to raze the building.

The following items were marked into evidence:

- A-1 Development application
- A-2 Survey dated 5/14/14
- A-3 Site plan dated 7/22/14
- A-4 Elevations dated 8/1/14
- A-5 Review letter from Board engineer dated 9/24/14
- A-6 Affidavit of Service
- A-7 Affidavit of Publication
- A-8 Colored rendering of proposed building from Feltz & Frizzell Architects
- A-9 Survey dated 3/10/14 from Delco Land Surveying Corp.

Mr. LaMonica indicated the application has received Ocean County Planning Board approval with conditions, on 9/3/14 and the Ocean County Soil Conservation District approval is pending. He further mentioned applicant will agree to obtain any and all other State or local permits that may be required for the project as a condition of any Resolution of approval which the Board deems appropriate.

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

**Jeffrey J. Carr**, Lindstrom, Diessner & Carr, 136 Drum Point Road, Brick, NJ, licensed professional engineer and licensed professional planner.

**Diane Turton**, 307.5 Lincoln Avenue, Point Pleasant Beach, NJ

Mr. LaMonica addressed several comments by members of the Board concerning garbage/solid waste; eave projections due to the awnings; parking, and front yard setback. Mr. Zabarsky recommended applicant recalculate floor area so long as there is a head clearance of at least 7 feet, especially as it applies to the storage area.

Mr. Furze asked if there was any public comment.

**Gloria Carpinello**, 228 East Avenue, Bay Head, NJ, currently a realtor at Diane Turton Realtors spoke.

A motion was made by Kathleen Tell and seconded by Edward Convey to adjourn and carry the application with no re-notice required, to a Special Meeting date of Wednesday, October 22, 2014. All in favor.

Under **Old Business**, Mr. Hein mentioned he was questioned by someone, and he was unclear of what the answer should have been. Mr. Hein stated that after Superstorm Sandy, there was some sort of rule or edict that stated whatever you had as a footprint of a building, you could rebuild on that footprint regardless of what building was there. Mr. Zabarsky stated it is a State law and there is no sunset on it, as far as he knows. He further indicated it was Governor Christie's desire to allow all those persons who were affected by Sandy to be able to meet the base flood elevation requirements, and not have to request zoning or planning approval if they stayed exactly in the footprint and went straight up. That applies to raising a building, not tearing down and re-building.

Under **New Business**, Mr. Furze asked the Board if they wanted to discuss Appendix A in the General Code. Mr. Zabarsky said the answer is simple; a letter needs to be written to General Code to tell them to delete the 6 out of the side yard setback. Mr. Furze recalled that what thrust us into making this revision is at a former meeting, Mr. Petrillo stated that he noticed that many of the oceanfront lots were 50 foot wide lots, and there was a concern that for the oceanfront residences which were substantially damaged, that was going to create a hardship and a lot of variance situations. The first conversation was how we could grant relief ahead of time in anticipation of the problem we might be facing. Mr. Furze thought we originally spoke if there was a 25 foot combined side yard for the oceanfront zone, why not reduce it for a 50 foot lot to 25%. The consequence is anything below a 50 foot lot is going to go to below 5 feet for the other side yard before you ask for a variance for both as opposed to one.

Mr. Zabarsky stated it couldn't be that the governing body, in passing a zoning ordinance, would allow a structure to be built without a variance, by permit, and have the house sit on the lot line. One could argue that no one would do that but the ordinance provides for it. Mr. Zabarsky stated he couldn't believe that would be the intent of the governing body to have a zero lot line setback on the oceanfront.

Mr. Furze stated his other objection is when we talked about the language at that meeting, he specifically stated it should be a percentage, not one-third. One-third of 50 can be 15, or .33%; 33% would be one-third which would be 16.5 feet, a big difference. Mr. Zabarsky stated 1/3 of 50 would be 16.666 which is 1/3 of the lot line; one-third of 50 feet would be 16.5 or whatever. Mr. Furze said we did speak about a percentage. Mr. Zabarsky stated they would have to have a combined side yard setback of not less than 16.66, eight and eight, and they would still need a variance. Mr. Furze stated the number 6 could easily have been put in the front. Mayor Curtis felt we compromised on the Smith application and did the right thing.

A motion was made by Kathleen Tell and seconded by William Tubbs to approve the **vouchers**. All in favor.

The meeting adjourned on a motion by Robert Hein and seconded by William Tubbs. All in favor.

Respectfully submitted,

Claire S. Hense