

Bay Head Planning Board
October 22, 2014

The meeting of the Bay Head Planning Board was held on Wednesday, October 22, 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, Kathleen Tell, Edward Convey, William Curtis, Bart Petrillo, Robert Hein, Kathleen Wintersteen, John Henry Morris, Frederick Applegate
Absent: Verity Frizzell, Patricia Wojcik, William Tubbs, Thomas Charlton

Mr. Furze stated the Board had for review the **Resolution** of Althea C. Smith, 525 East Avenue, a/k/a Block 65, Lot 7 which was approved at the meeting of October 1, 2014. A motion was made by Bart Petrillo and seconded by Kathleen Wintersteen to approve the Resolution as amended. Roll call: Bart Petrillo, Kathleen Wintersteen, William Furze, Edward Convey, John Henry Morris. Opposed: Kathleen Tell, Robert Hein. Absent: Verity Frizzell, William Tubbs

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

First is the continuation of the **application** of Turton Realty Associates, LLC, 88 Bridge Avenue, a/k/a Block 22, Lot 1.

Mr. Zabarsky caused to be marked into evidence B-1, a Certification by Mr. Petrillo that although absent from the first hearing, he had listened to the verbatim recording and was therefore eligible to vote. Mr. Zabarsky further indicated there were eight (8) eligible members to vote on the application this evening, although we are a nine (9) member Board, and applicant would need to garner five (5) votes in favor of the application in order to get a majority. Mr. LaMonica indicated this was acceptable to his client.

The following items were marked into evidence:

- A-10 Revised architectural plans dated 10/6/14
- A-11 Review letter from Board Engineer dated 10/16/14
- A-12 Affidavit of Service
- A-13 Affidavit of Publication

Mr. Zabarsky indicated at the last meeting there was an issue raised, and cited under our Ordinance, regarding if there was an increase in the gross floor area and if there was such an increase, applicant would have to have noticed for a parking variance. Mr. Zabarsky reviewed the notice and it appeared to him Mr. LaMonica, on behalf of applicant, advertised in item 7 for off-street parking requirements. Mr. Zabarsky advised that as we go along, if it turns out testimony is not provided that the gross floor area is either the same or less than prior, Mr. Zabarsky informed Mr. LaMonica he may want to consider amending the application to include the variance as so advertised. Mr. LaMonica indicated he would do that.

Christopher J. LaMonica, Esq., attorney for the applicant, came forth. Mr. LaMonica caused to have the following items marked into evidence:

A-14 “Photographic exhibit packet to substantiate bulk variances” from Lindstrom, Diessner & Carr, P.C. dated October 10, 2014

A-15 Schedule of gross floor area prepared by Lindstrom, Diessner & Carr, P.C.

A-16 Schedule of gross floor area assuming no 2nd floor in old building, prepared by Lindstrom, Diessner & Carr, P.C.

Mr. LaMonica wished to address several items which appeared to be relevant for discussion this evening, one of which was the identified rear yard setback requirement which he desired Mr. Carr to address first. The following previously qualified expert witness returned to the stand to give his testimony:

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

Mr. LaMonica indicated that for further amplification on the square footage issue, he wanted to present a contrasting reference via Exhibit A-16; that this Board is free to discard the applicant’s testimony and make a determination on credibility regarding what was going on upstairs in the other structure. He stated they could not provide any exact figures. The testimony is that pre-storm in the old building, there was an upstairs, it was used but they could not give an exact number. In a worst case scenario, they do generate a 2 parking space requirement and the Board is free to find it as a variance requirement that the applicant would have to meet. Mr. LaMonica indicated that on that basis, he requested a motion to amend the application to request a variance for parking. Mr. Zabarsky indicated he did notice for that, and that the Board had no objection and therefore, the application is considered to be amended to include a request for a variance for the parking regulations on the roadway.

Mr. Furze asked if there was any public comment.

Joanne Pehlivanian, 332 Western Avenue, Bay Head and **Gloria Carpinello**, 228 East Avenue, Bay Head, both long-term realtors for applicant, were sworn in by Mr. Zabarsky and gave their testimony.

A motion was made by William Curtis and seconded by Bart Petrillo to approve the application with the following conditions: A timberline roof will be used in place of the metal roof; a variance for no parking spaces on site is approved; any signs to be erected or constructed on site shall comply with all local Ordinance requirements; air conditioning units will comply with all requirements; the awnings shall only be extended during business hours; a receptacle area for refuse shall be included on an amended site plan map; the northern area of the lot in the rear of the structure shall remain impervious, and applicant shall provide a landscape plan to the Board Engineer for approval in order to develop a portion of the area located in front of the structure on Bridge Avenue for a pervious area. Roll call: YEAS: William Curtis, Bart Petrillo, Kathleen

Tell, Edward Convey, Robert Hein, John Henry Morris. NAYS: William Furze, Frederick Applegate.

After all members checked their calendars, a special meeting was scheduled for Wednesday, November 5, 2014 at 7:30 p.m. in the fire house.

William Gage, Esq., attorney for applicants Harry & Pauline D. Demas, 309 Main Avenue, a/k/a/ Block 33, Lot 3, third on tonight's agenda, requested an adjournment to the November 5, 2014 meeting, without having to re-notice. A motion was made by Kathleen Tell and seconded by John Henry Morris to do so. All in favor.

Mr. Furze stated the Board had for its review a second application this evening, that being the **application** of Mark & Holly Fedorcik, 859 East Avenue, a/k/a Block 81, Lot 9.

Christopher B. Healy, Esquire, 1 Airport Road, Lakewood, NJ, attorney for applicants, came forth. Mr. Healy stated that the applicant is seeking de minimis variance relief from various bulk requirements in the R-100 zone.

The following items were marked into evidence:

- A-1 Development application
- A-2 Survey
- A-3 Architectural plans dated 5/30/14
- A-4 Architectural plan sheet C1.0 revised 10/9/14
- A-5 Review letter from Board Engineer dated 10/16/14
- A-6 Hearing Notice Affidavit
- A-7 Affidavit of Publication

Mr. Healy caused to have A-8 marked into identification, a board modification of C1.0 regarding the landward edge of dune, an additional amendment to A-4. At this point, Mr. Healy advised applicantst need to amend their application to seek that relief, their notice having stated they would apply for any other variances they may need. Mr. Healy indicated they did not apply for a variance from the front yard setback because they did not realize at the time of application they would need one. Mr. Zabarsky inquired if they had it listed as a rear yard, and Mr. Healy confirmed they did.

Mr. Zabarsky advised Mr. Healy that if his documents don't show the request for the variance for the front yard not being measured to the landward edge of the dune, even if they thought it was the rear yard, applicants' rear yard was measured to the mean high water line. Therefore, the rear and front yards are wrong in terms of the measurements, calculations and request for a bulk variance, which causes a jurisdictional problem. After further discussion among Mr. Healy, Mr. Zabarsky, Board members and the Board Engineer, Mr. Zabarsky suggested that due to the major variances requested and without notice going out, it is deficient notice. He suggested to applicants' attorney that there was also a lot frontage issue and because that was not included in the notice, he therefore advised the Board we do not have the legal authority to hear this application. He advised Mr. Healy the Board is considering having the applicants re-notice, and

re-file their application and plans with the proper variance requests and schedules, and carry this to Wednesday, December 17, 2014 at 7:30 p.m.

Mr. Zabarsky asked if there were any interested parties.

Benjamin Denihan, 845 East Avenue, Bay Head, NJ, indicated he is available for the December 17, 2014 meeting.

Mr. Healy advised his clients and their experts were available for this date as well.

A motion was made by Kathleen Tell and seconded by Bart Petrillo to adjourn and carry the application to Wednesday, December 17, 2014, with applicants being required to re-notice and re-file their application. All in favor.

Under **Old Business**, as to Paolo & Wendy Costa, 453 East Avenue, Block 64, Lot 2 (formerly application #2013-18), Mr. Petrillo stated he spoke to the owner regarding this and basically, the owners received a variance to put stairs and a pool into the backyard. They decided the stairs were going to come too close to the pool so they want to remove the stairs from the back, remove the bluestone from around the pool, and move the staircase over to the side of the house, extending the deck down on the side. Mr. Petrillo stated he informed the owners they should send a letter for the Board's review. He further stated he had not physically been out to look at the site, and that no permits had been issued. Because one member thought that the work might already have been done without approval, it was suggested by Mrs. Tell and Mayor Curtis that Mr. Petrillo go to the site, take photographs and report back to the Board as to his findings. Mr. Zabarsky suggested this be added to the December 17, 2014 agenda under "Old Business" for Mr. Petrillo to report back.

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

The meeting adjourned on a motion by Kathleen Tell and seconded by William Curtis. All in favor.

Respectfully submitted,

Claire S. Hense