

**Bay Head Planning Board
December 16, 2015**

The meeting of the Bay Head Planning Board was held on Wednesday, December 16, 2015 at 7:30 PM.

Mrs. 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, Kathleen Tell, Edward Convey, William Curtis, Bart Petrillo, Robert Hein, Kathleen Wintersteen, Mark Durham, John Henry Morris, Thomas Charlton
Absent: William Furze, Patricia Wojcik, Frederick Applegate

The November 18, 2015 **Minutes** were approved on a motion by Kathleen Tell and seconded by Edward Convey, with all in favor.

Mrs. Frizzell stated that the sole **application** on the agenda this evening is that of Stephen A. and Shannon M. Curtis, 1500 Bay Avenue, a/k/a Block 85, Lot 6.

Shannon M. and Stephen A. Curtis, applicants, came forth.

The following items were marked into evidence:

- A-1 Development application
- A-2 Survey dated 2/7/14
- A-3 Board Engineer review letter dated 12/11/15
- A-4 Hearing Notice Affidavit
- A-5 Affidavit of Publication

Both Mr. & Mrs. Curtis, 1500 Bay Avenue, were sworn in by Mr. Zabarsky and gave their testimony.

Mrs. Frizzell opened the meeting to the public for comments. The following people were sworn in by Mr. Zabarsky and gave their testimony:

Vallerie Magory, 1510 Bay Avenue

Brian Magory, 1510 Bay Avenue

After the Board members were caucused, a motion was made by Kathleen Tell and seconded by Edward Convey to approve the application, with conditions. Roll call: YEAS: Kathleen Tell, Edward Convey, Verity Frizzell, Bart Petrillo, Robert Hein, Kathleen Wintersteen, Mark Durham, John Henry Morris, Thomas Charlton. NAYS: None

Mrs. Frizzell stated under **Old Business**, we have a letter from by Bryan F. McFadden., 134 Bridge Avenue, Block 16.01, Lot 5, whose application was heard at the August 19, 2015 meeting.

Mrs. Tell recused herself as she is a neighbor.

Bryan F. McFadden, 134 Bridge Avenue, was sworn in by Mr. Zabarsky.

Mr. McFadden caused to have the following marked into evidence:

- A-1 Letter from him dated December 3, 2015 addressed to the Planning Board,
- A-2 4 pages of hand drawings of the garage, and
- A-3 Architectural drawings from Aquatecture Associates, Inc. dated 6/8/15, revised 6/17/15 and noted as CS-1, page 1 of 4.

Mr. McFadden came before the Board to request a clarification regarding the variance he received in June, 2015. Mr. McFadden indicated the architect erroneously claimed applicants needed a ten foot (10') setback for the garage as was indicated on his plans when in actuality, only a four foot (4') setback for the garage was required. He is still planning on raising the height "a bit" and maintaining the same aesthetically pleasing roof lines. Mr. McFadden further stated there will be no change in the usage of the accessory structure.

Mr. Zabarsky informed the Board that according to the Ordinance, in the R-50 zone an accessory structure should be a minimum of four (4) feet to the property line and not ten (10) feet. He further indicated there were no variances requested for the garage at the time of the hearing and seeing as how Mr. McFadden plans to have the garage/garden cottage conform to the Ordinance requirements, as was stated in the final Resolution on page 6, item 4, no further action is necessary.

Under **New Business**, Mr. Petrillo indicated he needed clarification regarding oceanfront lots. The Ordinance always read that if oceanfront lots existed prior to May, 1977, they would not be considered non-conforming lots if they were not 100 feet wide. A while back, we amended the Ordinance as far as setbacks to state if the lot was 75 feet wide or less, the combined setback would be 1/3 the width of the lot.

An application he reviewed today was for an existing house on a 50 foot wide oceanfront lot, one-third (1/3) of which would be 16.67 feet. The Land Use Schedule of Area, Yard and Building Requirements chart still says it is an R-100 oceanfront which needs a minimum of ten (10') feet setback on one side. Mr. Petrillo's question is what is the Board's intention when they did the one-third – are we still requiring ten feet on one side and 6.67 on the other, or are we taking the 16.67 and dividing it in half and saying you need eight (8') feet on each side? It was agreed that this particular application to lift a house could do ten (10') feet on one side and 6.67 feet on the other, which would equal the combined setback.

All agreed that the minimum should be adjusted based upon the adjustment of the combined. Upon further discussion, it was agreed that Mrs. Frizzell would prepare a letter to the governing

body suggesting we leave footnote 6 alone, but make a change to the Ordinance that existing lots in the R-100 oceanfront zone which are less than seventy-five (75') feet in width, shall have combined side yards which are at least one-third (1/3) of the lot width. In the event the lot is less than sixty (60') feet in width, the side yard setback shall be a minimum of seven (7') feet.

Under **Public Discussion**, Michael Kelly of 100 Meadow Avenue brought pictures of construction being done at his neighbor's at 102 Meadow Avenue. He was concerned that what is being built is not in accordance with the plans submitted and the construction permit granted.

Mr. Petrillo indicated he and the construction official, Doug Applegate, have met with the architect, stopped the job, received certifications from surveyors, the architect and from an engineer stating what is being built is what was submitted originally for permit approval. He further indicated he advised Mr. Kelly he can't tell if we have an as-built done as of what is there today and it matches the numbers submitted, and cannot calculate what is on the entire lot until the construction is done and an as-built survey is submitted. Mr. Zabarsky advised that at the end of the day, the law is pretty clear that if you have a non-conforming structure, any addition put onto the non-conforming structure, if it conforms to the zoning ordinance, it does not require a variance. He further advised the Planning Board is not an enforcement agency and cannot give legal or any type of advice as it is not an advisory board. He advised Mr. Kelly that he has every right to proceed in any way he'd like to proceed. He told Mr. Kelly that if he is convinced the construction being performed is in violation of the ordinance and the neighbor needs a variance, and if the Code Enforcement Officer disagrees, he could ask Mr. Petrillo for a decision in writing. At this point, Mr. Kelly can file an appeal of Mr. Petrillo's decision and ask the Planning Board to adjudicate. He advised Mr. Kelly he could not give him legal advice.

A motion was made by William Curtis and seconded by Robert Hein to approve the **voucher**. All in favor.

Before adjourning, Mrs. Frizzell announced she would not be returning as a Board member because she is ethically in conflict as an architect who does work in the Borough. Mayor Curtis went on record to say he and Mrs. Frizzell discussed this. He feels this is a tremendous loss to the Board but he understands and reluctantly accepts her resignation.

There being no further business, the meeting adjourned on a motion by Verity Frizzell and seconded by Edward Convey. All in favor.

Respectfully submitted,

Claire S. Hense