

Bay Head Planning Board
March 18, 2015

The meeting of the Bay Head Planning Board was held on Wednesday, March 18, 2015 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, Bart Petrillo, Robert Hein, Kathleen Wintersteen, John Henry Morris, Thomas Charlton, Frederick Applegate
Absent: Kathleen Tell, William Curtis, Patricia Wojcik, Mark Durham

The October 22, 2014 Minutes were approved on a motion by Edward Convey and seconded by Bart Petrillo. Roll call: YAYS: Edward Convey, Bart Petrillo, William Furze, Robert Hein, Kathleen Wintersteen, John H. Morris, Frederick Applegate

The November 5, 2014 Minutes were approved on a motion by Kathleen Wintersteen and seconded by Verity Frizzell. Roll call: YAYS: Kathleen Wintersteen, Verity Frizzell, William Furze, Robert Hein, John H. Morris, Thomas Charlton, Frederick Applegate

Mr. Furze stated the Board had for review three resolutions this evening, the first being the **Resolution** of Edmund & Alva Kappy, 144 East Avenue, a/k/a Block 31, Lot 2 which was approved at the meeting of February 18, 2015. A motion was made by Verity Frizzell and seconded by Kathleen Wintersteen to approve the Resolution. Roll call: Verity Frizzell, Kathleen Wintersteen, Edward Convey, John Henry Morris, Thomas Charlton, Frederick Applegate. Absent: Mark Durham

Mr. Furze stated the Board had for review the **Resolution** of George & Corinne Papisikos, 808 Clayton Avenue, a/k/a Block 70, Lot 7 which was approved at the meeting of February 18, 2015. A motion was made by Verity Frizzell and seconded by Kathleen Wintersteen to approve the Resolution as amended. Roll call: YAYS: Verity Frizzell, Kathleen Wintersteen, Edward Convey, Robert Hein, John H. Morris, Thomas Charlton. Absent: Mark Durham

Mr. Furze stated the Board had for its review the **Resolution** of 571 West Lake Avenue, LLC, 571 West Lake Avenue, a/k/a Block 47, Lot 1 which was approved at the meeting of February 18, 2015. A motion was made by Verity Frizzell and seconded by Kathleen Wintersteen to approve the Resolution. Roll call: YAYS: Verity Frizzell, Kathleen Wintersteen, Edward Convey, Robert Hein, John H. Morris, Thomas Charlton. Absent: Mark Durham

Mr. Furze stated the first **application** on the agenda this evening, is that of Grant and Betsy Brady, 157 Bridge Avenue, a/k/a Block 41, Lot 17.

William T. Gage, Esq., 536 Lake Avenue, Bay Head, NJ, attorney for the applicants came forth.

Mr. Gage indicated applicant Grant Brady was unexpectedly called out of town on business and therefore, suggested an adjournment of the matter to the Board's next meeting date of April 15, 2015, with no further notice required. A motion was made by Robert Hein and seconded by Kathleen Wintersteen to approve same, with all in favor.

The second **application** on the agenda this evening is that of Smatco, Ltd., 809 East Avenue, a/k/a Block 81, Lots 6 and 6.01.

Frederick Applegate recused himself for personal reasons, and Mayor Curtis and Robert Hein, both Council members, were recused as they are not permitted to sit on the request for a special reasons variance application.

William T. Gage, Esq., 536 Lake Avenue, Bay Head, NJ, attorney for the applicant, came forth.

Mr. Gage stated the partners of the entity which owns the property are the daughters of Thatcher Brown who is in attendance this evening; Mr. Brown is acting as their agent tonight.

Mr. Gage stated applicants are applying to demolish a single-family residential dwelling, and detached garage, and desire to construct a new, second single-family residential dwelling which necessitates bulk variances as well as a special reasons variance for maintaining two single-family residential dwellings on one lot.

The following items were marked into evidence:

- A-1 Development application
- A-2 Letter of denial from Zoning Department dated 1/26/15
- A-3 Recorded Deed dated 5/15/1913
- A-4 Survey
- A-5 Plot plan
- A-6 Architectural plans
- A-7 Review letter from Board Engineer dated 3/12/15
- A-8 Hearing Notice Certification
- A-9 Affidavit of Publication
- A-10 S-1 of plans, color added
- A-11 Aerial photograph dated 9/6/13 from Google Earth, signed by Mr. Lindstrom

Mr. Gage called the following as witnesses, who were sworn in by Mr. Zabarsky:

William Thatcher Brown, 809 East Avenue, Bay Head.

John J. Lederer, 536 Lake Avenue, Bay Head, licensed architect.

Mr. Lederer stated he drafted the architectural plans submitted with this application. Mr. Lederer testified one of the goals of the applicants was to maintain the open green space shown on the property between the 2 structures. He testified the existing detached garage contains a bedroom

and bathroom. He further testified that the application for development requests relief to reconstruct the guest house with an attached garage, which will be moved east, away from East Avenue by approximately eight (8) feet from where the current garage is located. Mr. Lederer stated that the guest cottage will have one bedroom in the guest house portion of the structure and one bedroom above the garage, for a total of two bedrooms.

Charles E. Lindstrom, 136 Drum Point Road, Brick, NJ, licensed professional engineer and professional planner.

Mr. Lindstrom stated he drafted the survey and plot plan submitted with this application. He testified that moving the cottage out of the “V Zone” and away from the dune will provide a lesser encroachment to the dune and from a planning perspective, is a benefit. He testified that the relocation of the guest cottage will provided for water run-off to East Avenue and not to the adjacent property. Mr. Lindstrom testified there are special reasons for the Board to grant the variance request, i.e., the request meets the purpose of zoning as to safety, flood and fire. He stated the new structure will be built to the current building codes, as the existing structure is, in his opinion, outdated.

Mr. Lindstrom testified that the construction of a new single-family residential dwelling will be more aesthetically consistent with the structures in the neighborhood, and provide for less bulk variance conditions currently existing on the property.

Mr. Lindstrom further testified there will be no negative impact to adjacent property owners or the general welfare. Mr. Lindstrom stated there are approximately 11 houses between the subject property and Johnson Street, and of those 11 houses, at least 7 are closer than 10’ to East Avenue. Mr. Lindstrom testified that whether the Board grants the application or not, the lot presently maintains two single-family residential structures as well as a detached garage. As a result of the application, the detached garage will be removed, and several existing bulk variances will be alleviated since the existing garage, as an accessory structure, has a 2 foot side setback wherein 10 feet is required, and a 3.4 foot rear setback wherein 20 feet is required. Both of these variance conditions will be eliminated.

Mr. Furze opened the meeting to the public, and there was no public comment.

A motion was made by Kathleen Wintersteen and seconded by Edward Convey to approve the application, with the following conditions: There will be no subdivision of the property, the “green space” is to be preserved and remain as shown on the plan, and the cottage structure with garage will not be used as a rental, nor will any rental Certificate of Occupancy ever be issued. Roll call: YEAS: Kathleen Wintersteen, Edward Convey, William Furze, Verity Frizzell, Bart Petrillo, John Henry Morris, Thomas Charlton. NAYS: None

Under **Old Business**, Ms. Frizzell brought up footnote 6 in the Land Use Appendix A, Schedule of Area, Yard and Building Requirements. She stated she did revise it and it is on her computer, but she forgot to send it out today. She will do so for next month.

Also under **Old Business**, Mr. Furze indicated there was a question with regard to applicants coming before the Board looking to raise their homes and being able to do so without, and he paraphrased, “consideration of bulk requirements, non-conformities”. Mr. Hein asked him if he could put his finger on that legislation and he did find it. It is Statute S 2598, termed “Automatic Variance Law”, which was approved by both Houses on June 30, 2013. As a footnote, Mr. Furze indicated he spoke with the subject matter expert at the DCA who informed him they were not aware of it. Mr. Furze stated it’s not really their (the DCA’s) jurisdiction, it’s the jurisdiction of the local land use people.

Under **New Business**, Robert Hein brought up the topic of boats on private property. He stated that at the last Council meeting, it was the culmination of the last six months of discussion regarding changing two chapters in the Borough Ordinance, namely, numbers 157 and 222, the primary focus of which was parking in and around Bay Head. They also include things such as construction equipment being left on properties, trailers, and boats. The committee formed to discuss this didn’t do much with the boats, except the big change was they said each boat, each year, would have to get a permit from the Borough. As part of that permitting process, Bart Petrillo, the Code Enforcement Officer, would go out to each lot and determine where on the lot that boat should be situated. They came to that conclusion because in some places, front yards are back yards and back yards are front yards, and some houses have circular driveways, and houses with a front lot, houses with a side lot; they couldn’t come up with one term that would suit all of the lots in Bay Head as to where to put it. They figured they would give Mr. Petrillo some guidance of what they intended and he would, in turn, go out and determine where that lot would be. Mr. Hein indicated that when that ordinance went to the Council for the second reading, 2 members were very unhappy and one of the specific problems was “I don’t want boats in Bay Head”, as there are plenty of marinas and storage sites and that is where they should be kept. The Mayor thought the Planning Board could take a look at this, and he’d like our input. The question is whether boats should be here and where they should be.

Mr. Zabarsky interrupted and stated that the Planning Board does not have jurisdiction. The referral by the governing body to the Planning Board would only be for a new zoning ordinance, or an amendment to a zoning ordinance, and the placement of boats is pursuant to the Police power and the governing body, currently under Section 157 of the Borough of Bay Head Ordinances, the land use section is 147. He further stated that whatever this Board says cannot even be considered a formal recommendation to the governing body. Mr. Furze suggested if any Board members would like to attend a Council meeting, feel free to do so. He felt that the reason the Mayor was requesting this of the Board was because a lot of what this Board deals with concerns the aesthetics of our community and land use, and having a boat on your front steps has an impact on the community.

Mr. Zabarsky stated that “legitimately, 157-4 says that a boat trailer may be located on private property in a residential zone as long as the same is not located within the front, rear or side yard setback as established in 147”. Mr. Zabarsky stated the constraint is that it cannot be located in the setback. Mr. Petrillo stated that before the original Ordinance was changed, it said it couldn’t be in any of the setbacks; it would have to meet the front, side and rear yard setbacks, so that the only place you could put your boat would be in your living room. Mr. Petrillo stated that his suggestion to this was you treat it as an accessory structure, as you would a shed. He stated he

drove around town the previous day and there were 12 properties in town that had boats visible from the street, and he would say that with 2 of those properties, the boat would have to be moved. The rest were in the back yards, and 5 of them you couldn't even see from the street unless you got out of your car and went to the back yards to go look. He felt this was being blown way out of proportion. Mr. Hein stated that during the summer months, there can be quite a number of boats around town. Trailers have to be properly registered, boats have to have a current registration. It's the same thing with vehicles – you have to have a current sticker on your car or otherwise it's an abandoned car. There are rules; you can't just have half of a boat or a boat lying on its side, un-seaworthy.

Mr. Furze asked if anyone in the audience had an opinion. One person stated she didn't see a huge problem with boats in town in the summer as they were mostly all in the water.

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

The meeting adjourned on a motion by Verity Frizzell and seconded by Frederick Applegate. All in favor.

Respectfully submitted,

Claire S. Hense