

Bay Head Planning Board
August 17, 2016

The meeting of the Bay Head Planning Board was held on Wednesday, August 17, 2016 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, Edward Convey, Kathleen Tell, William Curtis, Bart Petrillo, John Henry Morris, Robert Hein, Kathleen Wintersteen, Mark Durham, R. Neil Devesty, Thomas Charlton, Frederick Applegate
Absent: Patricia Wojcik

The July 20, 2016 **Minutes** were approved on a motion by Bart Petrillo and seconded by Robert Hein, with all in favor.

Mr. Furze stated the Board had for review one **Resolution** this evening, that of 463 Club Drive, LLC, Judy Davis, regarding 463 Club Drive, a/k/a Block 49, Lot 9 which was approved at the meeting of July 20, 2015. A motion was made by R. Neil Devesty and seconded by Thomas Charlton to approve the Resolution. Roll call: YEAS: R. Neil Devesty, Thomas Charlton, William Furze, Kathleen Tell, Bart Petrillo, John Henry Morris, Robert Hein, Mark Durham, Absent: Patricia Wojcik.

Old Business

William T. Gage, Esq., attorney for Patrick & Shannon Waters, 41 Egbert Street, a/k/a Block 72 in Lot 10, came forth.

Mr. Gage stated the objectors, through their attorney, requested an adjournment of the matter. After discussing it with his clients, it was agreed the objectors should have an opportunity to be heard and they therefore agreed to have it carried. Mr. Gage stated that because Mr. Petrillo, a Board member, would not be available for the next scheduled hearing date of September 21, 2016, and more importantly because Mr. Petrillo, in his capacity as the Zoning Officer, could give his analysis of the zoning perspectives for this application, they were requesting a special meeting or in the alternative, that this application be moved to the following month's regular meeting, namely, October 19, 2016.

Mr. Zabarsky stated the Board received a letter dated August 10, 2016 from Edward F. Liston, Jr., Esq., who advised he represents Mr. and Mrs. Michael Rantz as well as some of their neighbors. Mr. Liston indicated that he, as well as his clients, were available for either the September or October regular meeting dates. The Board agreed to carry this matter to the regular meeting on Wednesday, October 19, 2016, with the necessity that the applicants re-notice interested parties.

Mr. Zabarsky stated he saw a couple of e-mails regarding a potential site inspection. He reminded the Board members, as Cox points out, that the Board has the right as members to view and inspect the property and the area, but the Board must be invited by the applicant to view the premises in question during a hearing. In such case it would clearly be unfair and contrary to the process of due process to exclude from such a site inspection attorneys representing objectors or any objectors who desire to attend the viewing. On the other hand, if the Board merely seeks permission from the applicant to view the premises by itself but not in the presence of the applicant or any interested persons, there would be no reason why such a site inspection would not be perfectly proper.

Mr. Zabarsky clarified there is a difference between an applicant inviting everyone to come look which means that everyone can come look – objectors, interested parties, attorneys for them – versus Board members. At this point, Mr. Zabarsky stated he didn't believe there was an invitation by the applicant to come look. If there is, then it would have to be extended to Mr. Liston and his clients and any other interested parties. The applicant shouldn't be present when Board members are making an inspection but rather, should only allow entry and then leave the area. Board members should take their own notes and certainly not discuss it amongst any other members.

A motion was made by Kathleen Tell and seconded by Edward Convey to carry the application to the regular meeting on October 19, 2016 with notice required. All in favor.

Mr. Furze stated there is one **application** on the agenda this evening, being that of Michael and Denise Brandes who are under contract to purchase the property located at 608 Lake Avenue, a/k/a Block 55 in Lot 12.

Applicant **Michael Brandes**, 18 Olcott Avenue, Bernardsville, NJ, came forth and was sworn in by Mr. Zabarsky. Mr. Brandes stated he and his wife, Denise, are under contract to purchase the premises in question. He further stated he is also the architect for this project and has been licensed as an architect in the State of New Jersey since 1997.

Mr. Brandes stated they are seeking a bulk variance on an undersized lot which was pre-existing, non-conforming. It formerly had a house on it which was destroyed by Sandy. It is 50 feet wide and 98.7 feet deep. Therefore, they are 1 foot, 3 inches shy of a conforming lot.

The following items were marked into evidence:

- A-1 Development application
- A-2 Survey from William H. Doolittle dated 6/24/16 and revised 7/27/16
- A-3 Plot plan from Charles E. Lindstrom dated 7/14/16
- A-4 Architectural plans from Brandes, Maselli dated 7/19/16
- A-5 Review letter from Susan S. Brasefield, Board Engineer, dated 8/10/16
- A-6 Affidavit of Publication
- A-7 Hearing Notice Affidavit with attached Hearing Notice

The following witness was sworn in by Mr. Zabarsky and gave his testimony:

Charles E. Lindstrom from the architectural firm of Lindstrom, Diessner & Carr, 136 Drum Point Road, Brick, NJ, licensed professional engineer and planner in the State of New Jersey.

Mr. Furze opened the meeting to the public for comment. The following person was sworn in by Mr. Zabarsky and gave his testimony:

Robert M. Applegate, Jr., 560 Lake Avenue, Bay Head.

After discussion, a motion was made by Kathleen Tell and seconded by Robert Hein to carry the matter to next month's regular meeting on September 21, 2016, with all in favor. This is in order for the applicants to submit a new survey and plans. Mr. Zabarsky stated if applicants are requesting a variance which has not been advertised, they must re-notice as well.

Mr. Furze opened the meeting to **Public** Discussion; there was none.

Old Business

Camryn Holdings, LLC regarding property located at 107 Bridge Avenue, a/k/a Block 45, Lot 11

This was brought up because at last month's meeting, the applicants revealed preliminary plans for construction at both their premises and the one next door. At the Board's request, they were to return this month with more detailed drawings but were not ready. They have requested time be extended to continue their informal application until the next regular meeting on September 21, 2016, with the understanding they will notify property owners within 200 feet via certified mail

Several Board members did not feel the Board has a right to hear the remainder of the presentation for zoning issues. Mr. Zabarsky stated that pursuant to 4:55D-10.1, the formal review of a developer's concept plan: "At the request of the developer, the Planning Board shall grant the informal review of a concept plan for a development for which the developer intends to prepare and submit an application for development. The amount of any fees for such an informal review shall be credited towards fees for the application for development. The developer is not bound by any concept plan and the Planning Board shall not be bound by any such review."

Mr. Zabarsky stated it says Planning Board, but what he's reading from the interpretation is that that is, in fact, an informal concept plan for a Planning Board matter, meaning a site plan subdivision. If it is an informal with regard to variances, which is a Zoning Board function, there is no provision in the Land Use Law for a formal review by a Zoning Board. The point is this is for a Planning Board, not a Zoning Board. Mr. Zabarsky further stated the Municipal Land Use Law does not provide that the Board can grant an informal for a Zoning Board function. Site plan and subdivision is Planning Board.

Mr. Zabarsky stated that as a combined Land Use Board, the Board serves as a Zoning Board. As a Planning Board, if its site plan or subdivision with variances, that is a Planning board

function. The Zoning Board functions purely for a use and bulk variances. If they are just looking for relief under 40:55D-10.1, subsection C use or bulk, then we should not be hearing this.

Mrs. Tell advised we should inform the applicant we are not authorized to conduct an informal hearing, that having heard what they had to say thus far, we realize they are looking for a use variance and for that reason, we are not authorized to hold an informal hearing. Other Board members agreed.

Mr. Zabarsky further stated we should have an Ordinance that provides for informals. If we do not have one, we should and it should make clear it applies only to Planning Board functions, and not the Zoning Board. It was agreed it would be appropriate for Mr. Zabarsky, as Board attorney, to prepare a letter to the applicants and the Board Clerk will pass it on to them.

Mr. Furze opened the meeting to **Public** Discussion; there was none.

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

There being no further business, the meeting **adjourned** on a motion by Kathleen Tell and seconded by Frederick Applegate.. All in favor.

Respectfully submitted,

Claire S. Hense