

**Bay Head Planning Board**  
**July 20, 2016**

The meeting of the Bay Head Planning Board was held on Wednesday, July 20, 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, Kathleen Tell, Patricia Wojcik, Bart Petrillo, John Henry Morris, Robert Hein, Mark Durham, Neil Devesty, Thomas Charlton  
Absent: Edward Convey, William Curtis, Kathleen Wintersteen, Frederick Applegate

The June 15, 2016 **Minutes** were approved on a motion by Kathleen Tell and seconded by Bart Petrillo, with all in favor.

Mr. Furze stated there are two **applications** on the agenda this evening, the first being that of Judy Davis, owner of the property located at 463 Club Drive, a/k/a Block 49, Lot 9.

Applicant **Judy Bradley Davis**, 509 West Lake Avenue, came forth and was sworn in by Mr. Zabarsky.

The following items were marked into evidence:

- A-1 Development application
- A-2 Plans dated 4/8/16 from Archimuse
- A-3 Review letter from Board Engineer dated 7/13/16
- A-3 Hearing Notice Affidavit
- A-4 Affidavit of Publication

Ms. Davis stated that the premises is a single family house which was heavily damaged during Superstorm Sandy. She further stated she is seeking to lift the house and add two additions, one each to the existing garage, and to the back of the house.

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

**Benjamin Kracauer** from the architectural firm Archimuse, 139 Fulton Street, New York, NY, licensed architect in the States of New Jersey and New York.

Mr. Furze opened the meeting to the public for comments; there were none.

After the Board members were caucused, a motion was made by Kathleen Tell and seconded by Robert Hein to approve the application. Roll call: YEAS: Kathleen Tell, Robert Hein, William Furze, Patricia Wojcik, Bart Petrillo, John Henry Morris, Mark Durham, R. Neil Devesty, and Thomas Charlton.

Mr. Furze stated the second **application** on the agenda this evening is that of Patrick and Shannon Waters, owners of the property located at 41 Egbert Street, a/k/a Block 72, Lot 10.

**William T. Gage, Esq.**, 536 Lake Avenue, Bay Head, NJ, attorney for the Waters', came forth.

Mr. Gage stated there are 2 structures on the property - one is the main house in the front of the property, and the other is a small accessory structure in the rear of the property. Mr. Gage stated that located inside the accessory structure is a toilet, a sink, a shower and a hot water heater. He further stated that pursuant to the 2002 revisions to the Bay Head Land Use Codes, such fixtures were deemed non-permissible inside of accessory structures and therefore, as of that time, they became non-conforming. Mr. Gage further stated that the Legislature has recognized that many times, towns who pass ordinances, whereby the pre-existing uses that were in existence for some time, would then become non-conforming. Whereas in the possible inequities of stripping away the owners' property rights that have existed for some time, enacting the Municipal Land Use law, that is Statute 40:55D-68 whereby an owner of the property that has a structural or use that existed as of the date of the Land Use ordinance, could bring an application for a Certificate, having it declared that that use may continue. Mr. Gage stated that is what his clients are requesting.

Mr. Gage further stated they were not requesting a variance, that this is different from a variance. Mr. Gage stated that in a variance, he would come before the Board and ask for permission to build a structure or commence a use that is in opposition to the Land Use ordinance. In this particular case, they are asking the Board to recognize a right that is already vested, that is already there. After evidence and testimony, Mr. Gage stated he hoped at that point the Board could make their decision as far as whether or not they believe these fixtures did pre-date the zoning ordinance

Mr. Gage stated the burden of proof is upon the applicants to show that these fixtures existed as of the date of the enactment of the ordinance on the date in 2003, although it wasn't 2003 as Mr. Petrillo can verify.

Mr. Petrillo recused himself as he has spoken to a couple of the objectors and feels it is better he not vote on the application.

Mr. Zabarsky stated that under 40:55D-68, any non-conforming use or structure existing at the time of the passage of an ordinance may be continued upon the lot, or in the structure so occupied, and any structure may be restored or repaired in the event of partial destruction. Mr. Zabarsky stated the applicant has the burden of proof and has one year from the date of the ordinance to obtain a Certificate of Non-Conformity from the Zoning Officer. He further stated that in this case, what Mr. Gage is indicating, is it is his understanding that the ordinance in question which prohibits those items now in this accessory structure was in 2003, and that application was not made within a year and now this application has to come to the Board.

Mr. Zabarsky stated the applicants are seeking a Certificate of Non-Conformity for the items in this particular accessory structure. He further stated that as Mr. Gage indicated, the burden of

proof is upon the applicants, but there is a section in Cox about this and he quoted from same and directed the Board that is what they need to focus upon.

After some questions from a couple of Board members directed to Mr. Zabarsky, the following person was sworn in by Mr. Zabarsky and gave his testimony:

**Patrick Waters**, 41 Egbert Street, Bay Head

Mr. Gage requested an adjournment due to the fact that there could be a question in Board members' minds as to whether or not there was an ordinance prior to 2003 which would have prohibited these items.

Mr. Furze stated he would like to open the meeting to the public for comments. He stated he personally would like to have another look at the building as it looks like it was a garage that may have been converted with fixtures. He further stated we don't know if they were illegal or not, that we have no way of knowing, but that would be the applicants' burden.

Mr. Zabarsky suggested if someone cannot be here next time and they want to give testimony that would be fine, but he suggested if they can be here at the next meeting, they should hold their testimony so they can hear everything that is put in and then make their comments. He further stated the matter will be carried to the next regular meeting, that being August 17, 2016 at 7:30 p.m., and this meeting will take place at the Bay Head Elementary School gymnasium, 145 Grove Street. He confirmed there will be no re-notice required. Mr. Zabarsky again stated to the public that if they can be there for the August meeting, he asked they not give their testimony tonight but wait for that night, but if they can't be there then they should proceed tonight.

The following persons were sworn in by Mr. Zabarsky and gave their testimony:

**Michael Gary Rantz**, 44 Goetze Street, Bay Head, who caused to have O-1 marked into evidence, which consists of 3 colored photographs taken at 44 Goetze Street and looking towards the property in question.

**Kathleen Mastrangelo**, 40 Goetze Street, Bay Head;

**Barbara Hart Madrid**, 37 Egbert Street, Bay Head;

**Rodney William Madrid**, 37 Egbert Street, Bay Head.

Mr. Hein made a motion to close the meeting to the public, which was seconded by Mr. Morris. All in favor.

Kathleen Tell made a motion to adjourn the meeting until the next regular meeting date on August 17, 2016 without any additional notification, which was seconded by Robert Hein. All in favor.

Mr. Furze stated the next item on the agenda is an **Informal application** by Camryn Holdings, LLC, who are the owners of property located at 107 Bridge Avenue, a/k/a Block 45, Lot 11.

**Louis Mercantante**, 463 Lake Avenue, Bay Head, came forward.

Mr. Mercantante stated he also owns 107 Bridge Avenue, directly across from Borough Hall, which currently has 2 existing structures, both which are duplexes, and which were damaged by Sandy. He stated they have rehabilitated some parts of the property but they have made the decision to raise the property to conform with FEMA. Mr. Mercantante stated that as part of that process, while going through the engineering, the property to the west became available for sale. He stated he spoke with the owner and indicated to her he would like to combine it with their current property. His property is zoned B-1 and her property is in the R-50 zone. He stated the property owners' parents told her it was their belief their property was in the B-1 zone at one point. Mr. Mercantante further stated that the concept is to incorporate both properties, making it approximately 105' wide by 175' deep, north to south.

Mr. Mercantante stated they would like to replicate what is on their property by building three additional structures which would have 2 units each. There would be six new units, each being between 1,000 and 1,200 sq. feet. They would need additional variances. Mr. Mercantante stated the idea is to elevate all structures to comply with FEMA, having garages underneath, as well as on-site parking. He stated they would like to eliminate their current driveway and have one driveway in the middle with adequate parking for 20 vehicles, ten underneath the building and ten on the land.

After further testimony by Mr. Mercantante, who stated his information was preliminary, the Board requested additional information and it was the consensus of the Board that the neighbors be notified of the next hearing, scheduled for the regular meeting on August 17, 2016.

There was no **Old Business**.

**New Business** – Susan Brasefield, Board Engineer, mentioned the Borough has five days to post Sandy planning updates. One of them is a Master Plan update, and the other one is a zoning update. It will eventually come to the Board anyway but either the Mayor or she will be sending out an e-mail looking for volunteers for steering committees. She was thinking a separate one to Planning Board members so members could pick the things they were most interested in, or everything, which would be a big time commitment. Ms. Brasefield further pointed out it is coming up to the time when we will need to update the Master Plan anyway.

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

There being no further business, the meeting **adjourned** on a motion by Robert Hein and seconded by Neil Devesty. All in favor.

Respectfully submitted,

Claire S. Hense