

Bay Head Planning Board
October 19, 2016

The meeting of the Bay Head Planning Board was held on Wednesday, October 19, 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, Patricia Wojcik, William Curtis, Bart Petrillo, John Henry Morris, Neil Devesty, Thomas Charlton, Frederick Applegate
Absent: Robert Hein, Kathleen Wintersteen, Mark Durham

The September 21, 2016 **Minutes** were approved on a motion by William Curtis and seconded by Neil Devesty, with all in favor.

Mr. Furze stated the Board had for review one **Resolution** this evening, that of Michael and Denise Brandes, regarding 608 Lake Avenue, a/k/a Block 55, Lot 12 which was approved at the meeting of September 21, 2016. A motion was made by Edward Convey and seconded by Kathleen Tell to approve the Resolution as amended. Roll call: YEAS: Edward Convey, Kathleen Tell, William Furze, William Curtis, John Henry Morris, Neil Devesty. Absent: Robert Hein, Kathleen Wintersteen, Mark Durham

Mr. Furze stated that the first of three **applications** on the agenda this evening is that of Patrick & Shannon Waters, 41 Egbert Street, a/k/a Block 55, Lot 12.

A motion was made by Kathleen Tell and seconded by Bart Petrillo, to amend the Agenda to reverse the order of the first two applications to first hear the application of Playa Bowls, LLC regarding 62 Bridge Avenue, a/k/a Block 25, Lot 5. All in favor.

Robert Giuliani, 804 Ocean Avenue, Belmar, NJ, came forth.

The following items were marked into evidence:

- A-1 Development application
- A-2 Former Resolution of the Planning Board, #2016-02, dated 5/18/16
- A-3 Review letter from Board Engineer Susan Brasefield, P.E., P.P. dated 9/14/16
- A-4 Hearing Notice Affidavit
- A-5 Affidavit of Publication

Mr. Giuliani requested Playa Bowls' original application be extended from a seasonal business to a year-round business inasmuch as the property owner has decided to keep the building up for another season. He would additionally like to serve hot coffee to supplement his menu. There are no physical changes to the building.

Mr. Petrillo stated he had some issues with this application. Back when applicant was before the Board in May, there was an indication as to signage to which applicant did not comply, and it was agreed there would be no deliveries to the site. Mr. Petrillo indicated he has been receiving complaints about deliveries being made at least 3 times per week. He is reluctant to extend this application because he sent letters and no response was forthcoming from applicant.

Mr. Giuliani apologized and stated they made mistakes with the signage, having painted a pineapple on the door not realizing it was considered signage. He apologized about the food deliveries and explained that US Foods delivers to their Manasquan site and when they saw there was a location in Bay Head, they commenced deliveries to that site as well which they should not have done. When he was made aware of this in August, he stopped all deliveries to Bay Head. Thereafter they were being picked up in Manasquan and hand-delivered to Bay Head and now that that location is closed for the season, they are being picked up and hand-delivered from their Belmar location.

Mayor Curtis also mentioned he had received “a ton of complaints”, and felt that they did some things during the year and followed the philosophy of they’d rather apologize than ask permission in advance. He explained it is very simple to get things approved if one writes to the Mayor and Council. He accepted Mr. Giuliani’s apology but stated if the Board approves this extension and there is one more complaint, he will authorize Mr. Petrillo to close them down until next year.

Mr. Giuliani agreed and stated this was rightfully so. He stated he could again apologize just so much, and stated they are a young company and made mistakes which were not intentional, and they are learning. He stated Bay Head is completely new to them and has some by-laws which they unintentionally broke, especially in regards to painting the door. He stated they are very happy in this town, it was one of their smoothest operations as far as customers go and not many complaints. Mr. Giuliani stated they would like to stay in Bay Head for a while if possible.

Mayor Curtis said the Board is reluctant to turn things down, we want businesses to succeed but we also have rules on the books which we want followed. Another member pointed out if Mr. Petrillo calls or sends him something, to get back to him. Mr. Giuliani agreed there was no excuse for that, despite how busy they were this summer, and stated he should respond in a more timely fashion and certainly will.

Mr. Zabarsky stated there were several items in the former Resolution for which they are seeking relief, i.e., serving hot coffee, operating the business beyond September 5, 2016, and the hours of operation. With daylight savings time kicking in soon, there will now be an issue with lighting. He stated if the Board wants to allow Playa Bowls to consider a brief extension to allow this business to lawfully continue, applicant needs to file another application that they are going to operate for another year, i.e., through the winter months. There are clearly issues with regards to the application which were not addressed by this Board to maintain such an operation. Applicant needs to supply plans and details as to what his intention is with regard to staying open. This can’t be done by just giving an extension. There was no notice to the public as to what they are asking for – nothing about serving hot coffee or about for how long they would like the extension.

Mr. Zabarsky further stated applicant needs to look at our Ordinance and comply with the requirements, as applicant needs to re-address the issues in the Ordinance, namely, time of operation, hot coffee, deliveries, refuse, and lighting. These are substantial issues.

A motion was made by Kathleen Tell and seconded by Neil Devesty to approve the application to extend the operation of the business through December 31, 2016, to comply with the conditions set forth in the original Resolution or the business will be shut down, and closing shall be no later than 5 pm on any given day. Roll call: Yea: Kathleen Tell, Neil Devesty, William Furze, Patricia Wojcik, William Curtis, Bart Petrillo, John Henry Morris. Nay: Edward Convey

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

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

Thomas M. Letizia, Esq., of the law firm of Pepper Hamilton, 301 Carnegie Center, Princeton, NJ, co-counsel for the applicants, came forth.

Edward F. Liston, Jr., Esq., 207 Hooper Avenue, Toms River, NJ, attorney for the objectors Rantz, Murray, Madrid and Mastrangelo, came forth.

Mr. Liston had a preliminary jurisdictional matter regarding the nature of the application which he brought up, and caused to have marked into evidence O-2, O-3 and O-4. Mr. Zabarsky questioned exactly what uses applicants' are seeking, more particularly, if they were looking for someone to occupy the accessory structure for sleeping quarters and residential use. He wanted to know if they were seeking a Certificate of Non-Conforming Use as to the toilet, sink and shower only, and if they withdrawing the sleeping purposes aspect of the application.

Mr. Gage stated the reason he changed the Notice as to this second hearing is because at the last hearing, he felt they went "too far off the reservation" as far as discussing how the property itself may or may not be used, and stated that was never the contemplation of his clients. Mr. Gage further stated the contemplation was to insure that the sink, toilet and shower could be maintained on the property, and they are not requesting any relief by this Board to give permission for any sleeping quarters for the building in question. He stated how it will be used in the future will be in accordance with the Bay Head Land Use Ordinance and if sometime in the future the neighbors or someone else determine it is being used in contradiction to said Ordinance, they have a right to file a complaint and the Borough can take action accordingly, or his clients could bring an application for a use variance. He stated they are here this evening for one thing only, that being to request a Certificate of Non-Conformity regarding the sink, toilet and shower.

Mr. Liston felt the applicants should be applying for a use variance because they have no proof the fixtures were ever legal when installed, have never been on the Borough's tax records or been inspected, and no permits were ever found for any of those things. Mr. Liston stated applicants should be applying for a D variance and take their chances on their proofs. To this,

Mr. Gage stated he wanted to correct the record because he did not say they should have come for a D variance to keep these items in, that what he did say was if the structure did not have them, if they were not presently located in the structure, then they would request a use variance. Mr. Gage further stated that given the fact they are in the building right now, it would mandate the applicants go for a Certificate of Non-Conformity, not a D variance.

Mr. Zabarsky went on to state that in our Ordinance, section 147-2, there are definitions regarding accessory use or building and quoted from same. He clarified from section 147-6.1 regarding permitted uses in all residential zones and mentioned section B as to accessory structures. He further stated he did some additional research regarding something that came up at the last meeting regarding the meaning of pre-existing, non-conforming lawful use, and went on to cite three cases he felt were germane to this matter. He stated the short answer is it is lawful under the zoning ordinance, and that is what a pre-existing, non-conforming Certificate of Use request means.

Mr. Liston brought up the issue of abandonment, and Mr. Zabarsky stated the case law is, is there a direct intent to abandon the facilities. The fact they may not have been used over the years, the case law is pretty clear it is not an intent to abandon, which would be he ripped them out and now is asking to put them back in.

The Board Clerk enumerated the items already marked into evidence at the previous hearing, and the following items were marked into evidence:

- A-10 Letter from William Gage, Esq. dated 10/7/16 including six (6) photographs
- A-11 Land Use booklet dated August, 2002 with notation "replaced 1/28/04"
- A-12 Letter from Ro-Bo, Inc. addressed to applicants and dated 10/4/16
- A-13 Certificate of Notice of Hearing
- A-14 Affidavit of Publication
- A-15 Bay Head Ordinance #2003-06
- A-16 Attest by Municipal Clerk Patricia Applegate dated 10/19/16 with the final page from Ordinance #2003-06

Mr. Zabarsky marked the following into evidence:

- B-1 Certificate of Absent Member William Curtis
- B-2 Certificate of Absent Member Edward Convey
- B-3 Certificate of Absent Member Frederick Applegate

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

- O-2 Copy of letter dated 7/6/16 from William T. Gage, Esq.
- O-3 Copy of letter dated 7/8/16 from William T. Gage, Esq.
- O-4 Copy of letter dated 10/5/16 from William T. Gage, Esq.

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

Bart Petrillo, 106 Bridge Avenue, Bay Head, NJ, Zoning Officer since November, 1999

Robert Dege, 271 Leswing Drive, Brick, NJ

After a short break, Mr. Furze interrupted the continuation of the Waters hearing in order to address the third **application** on the agenda, that of Gary and Teresa Esoldi regarding 126 Osborne Avenue, a/k/a Block 1, Lot 47.

Mr. Zabarsky indicated that since it was already after 9 p.m. and the Board typically doesn't start an application after 9 p.m., and because Mr. Liston had not started to present his witnesses yet, they had not yet been cross-examined, the public had not yet spoken and the Board had not yet made a decision, he suggested to the Chairman to ask the Esoldis if they'd like to come back to be heard at the November 9, 2016 meeting.

A motion was made by Kathleen Tell and seconded by William Furze to carry this matter to the next meeting, namely November 9, 2016, without notice. All in favor.

The Board returned to the Waters application. The following witnesses were sworn in by Mr. Zabarsky and gave their testimony:

Michael Gary Rantz, 44 Goetze Street, Bay Head, NJ, who caused to have O-5, O-6, O-7 and O-8 marked into evidence.

Henry Murray, 45 Egbert Street, Bay Head, NJ

A motion was made by Kathleen Tell and seconded by John Henry Morris to adjourn the application without any notice, and carry to the next meeting date of November 9, 2016. All in favor.

There was no **Old Business** or **New Business**.

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

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

Respectfully submitted,

Claire S. Hense