

Bay Head Planning Board
February 15, 2017

The meeting of the Bay Head Planning Board was held on Wednesday, February 15, 2017 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, John Henry Morris, Patricia Wojcik, William Curtis, R. Neil Devesty, Thomas Charlton

Absent: Mark Durham, Robert Hein, Frederick Applegate

Mr. Furze stated that before we get started, he understood we have an issue at hand. Mr. Zabarsky stated we received notice that the O'Hara & Murphy application has a new attorney, namely, Robert C. Shea, Esq., who is representing the applicants.

Mr. Zabarsky stated Mr. Shea telephoned him the previous day and he had to do some research. He sent a note to the Board Clerk this morning with a copy of the case Mr. Shea sent to him. The case has to do with the issue of adequate notice of the Open Public Meetings Act, more specifically, our obligation to notice. Mr. Shea discovered there may be an issue and gave him a heads up on it. Mr. Zabarsky further stated he spoke earlier with Roger McLaughlin, Esq., attorney for the objector. Mr. Shea advised Mr. Zabarsky that he had an issue recently in Monmouth County, and now it looks as though it is clearly an issue for our Board.

Robert C. Shea, Esq., Toms River, NJ, attorney for the applicants O'Hara and Murphy came forth. Mr. Shea stated unfortunately this is an issue which he has come across mainly in Monmouth County, and more specifically in Aberdeen and Shrewsbury, as to whether or not the Boards have reorganized properly under the Open Public Meetings Act, 10.6, which he brought to Mr. Zabarsky's attention. It was discovered only one newspaper had been used to publicize the reorganization and notification of meeting dates for the year, which about 70% of the towns in New Jersey have done in the past one and one-half months. Mr. Shea stated that since 1975 it has been required to send out notices to two (2) newspapers at the beginning of the year for reorganization. He further stated unfortunately it does not indicate it has to be published by two (2) newspapers, but has to be sent to two, and with that, he is concerned about the jurisdictional end of this so as not to subject the applicant or the Board to attack later on down the road.

Mr. Zabarsky stated that based upon the circumstances, it is his direction to the Board that we do not have the authority to adjudicate the O'Hara and Murphy application tonight which includes the second application on the agenda as well, that of Playa Bowls. Mr. Zabarsky suggested the remedy is to have the Board Clerk send to two publications - the Borough uses the Ocean Star and the Asbury Park Press. He would like the Clerk to re-notice in both publications for a reorganization meeting, and to send a notice of the publicly scheduled meeting dates to the same 2 newspapers for publication. Mr. Zabarsky stated when we return on March 16, 2017, we will

reorganize again. At that point the Board would be ready to hear any applications as we have met our obligations to the Open Public Meetings Act.

Roger J. McLaughlin, Esq., attorney for the objector, stated he is familiar with the decision and agreed with everything Mr. Zabarsky stated. While they are disappointed, they realize we cannot proceed tonight as it makes no sense from a legal perspective.

Mr. Zabarsky informed Mr. McLaughlin that there was an issue with the applicants' prior attorney regarding the issue of parking. Mr. Zabarsky indicated he spoke with Mr. Shea about it and gave him his opinion that as long as he's been an attorney for a Zoning or Planning Board, when it comes to a residence, for a simple bulk variance request parking is a bulk variance and not a waiver, and therefore if they can't meet the parking requirements of 2 vehicles on site, it would be considered a variance request. Mr. Zabarsky stated he did not think it was originally noticed, so he told Mr. Shea in case the applicants want to notice for that. Mr. Zabarsky further stated that if they don't think they need a variance that would be fine, but it would be a variance if you can't comply with the ordinance on parking.

Mr. Shea stated he would defer to the Zoning Officer to call that out; if it's called out as a variance, he will notice for it but if it is not, they won't. He further stated they are not the ones responsible for calling out variances pursuant to Section 72. Mr. Zabarsky suggested Mr. Shea might want to get another opinion from the Zoning Officer based upon their plan.

Ms. Brasefield stated the architect did revise the plan to show two (2) parking spaces, one in front of the other. Mr. Shea stated one is off the easement. Mr. Zabarsky stated the issue will be can you park on the easement or does that require a variance.

Mr. Zabarsky advised the audience that this meeting could not be conducted under the Open Public Meetings Act and therefore we are going to have to adjourn. He suggested the matters on tonight's agenda be carried to the next meeting in March.

Mayor Curtis stated that as everyone knew, Tom Applegate passed away not too long ago and on this Saturday, February 18 at 11 a.m., there will be a memorial service for him at St. Paul's United Methodist Church on the corner of Bridge & W. Lake Avenues, with a repast to follow at the Bay Head Yacht Club. Mayor Curtis stated Betty Lou Applegate would be very honored if as many people could attend as possible. He further stated Mr. Applegate was a fixture in this town for the past 82 years, including the day he was born. Several Board members mentioned their children had worked there as teenagers and it was an enjoyable job.

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

Respectfully submitted,

Claire S. Hense