

**Bay Head Planning Board
January 18, 2017**

The meeting of the Bay Head Planning Board was held on Wednesday, January 18, 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, Patricia Wojcik, John Henry Morris, Robert Hein, Mark Durham, Neil Devesty, Thomas Charlton

Absent: William Curtis and Frederick Applegate

The October 19, 2016 **Minutes** were approved on a motion by Robert Hein and seconded by John Henry Morris, with all in favor.

The December 21, 2016 **Minutes** were approved on a motion by Neil Devesty and seconded by Robert Hein, with all in favor.

The following members were sworn in by Steven A. Zabarsky, Borough Attorney:

CLASS III – Robert F. Hein

**CLASS IV – William A. Furze
John Henry Morris
Mark F. Durham
Thomas S. Charlton**

The following members were elected as officers:

A motion was made by Kathleen Tell and seconded by Robert Hein to elect **William Furze as Chairman**. All were in favor.

A motion was made by William Furze and seconded by John Henry Morris to elect **Kathleen Tell as Vice-Chairperson**. All were in favor.

A motion was made by William Furze and seconded by Kathleen Tell to elect **John Henry Morris as Secretary**. All were in favor.

A motion was made by William Furze and seconded by Kathleen Tell to elect **Patricia Wojcik as Assistant Secretary**. All were in favor.

A motion was made by William Furze and seconded by Robert Hein to appoint the following:

Attorney: Steven A. Zabarsky, Esq.
Engineer: Susan S. Brasefield, P.E., P.P.
Clerk: Claire S. Hense

All were in favor.

A motion was made by William Furze and seconded by Thomas Charlton to designate meeting dates and time as Wednesday, February 15, 2017 and thereafter, the third Wednesday of each month at 7:30 p.m., with the exception of the November meeting which shall occur on the second Wednesday of the month, namely, November 8, 2017; and to designate the Ocean Star and Asbury Park Press as the official newspapers. All in favor.

Mr. Furze stated the Board had two Resolutions for review, the first being the **Resolution** of Patrick and Shannon Waters, 41 Egbert Street, a/k/a Block 72, Lot 10 which was approved at the meeting of December 21, 2016. A motion was made by Robert Hein and seconded by Neil Devesty to approve the Resolution. Roll call: YEAS: Robert Hein, Neil Devesty, John Henry Morris, Mark Durham, Thomas Charlton. Absent: Edward Convey, William Curtis

Mr. Furze stated the Board had for review the **Resolution** of Bradford A. Fritts, 330 East Avenue, a/k/a Block 33.01, Lot 10 which was approved at the meeting of December 21, 2016. A motion was made by Robert Hein and seconded by John Henry Morris to approve the Resolution. Roll call: YEAS: Robert Hein, John Henry Morris, William Furze, Kathleen Tell, Patricia Wojcik, Neil Devesty. Absent: Edward Convey, William Curtis, Bart Petrillo.

Mr. Zabarsky noted there is an objector to the O'Hara and Murphy application which is first on tonight's agenda, and the objector's attorney, Roger McLaughlin, Esq., cannot get to this meeting until at least 8:30 pm. Mr. Zabarsky recommended we reverse the order of the applications, thereby putting Outlook Partners, LLC first. A motion was made by Kathleen Tell and seconded by Robert Hein to move this application to second on tonight's roster. All were in favor.

Mr. Furze stated therefore the first **application** to be heard this evening is that of Outlook Partners, LLC, 524 Lake Avenue, a/k/a Block 53, Lot 1.

Mark Durham recused himself as he is a neighbor to applicant's property.

John J. Jackson, Esq., attorney for applicant Outlook Partners, LLC, Jon and Sally Younghans, came forth.

The following items were marked into evidence:

- A-1 Development application
- A-2 Survey from Morris Surveyors dated 7/22/16
- A-3 Architectural drawings from Jeff Schneider dated 10/14/16
- A-4 Site plan, including maps and property plans, from Taylor Engineering Co. dated 10/18/16
- A-5 Review letter from Susan S. Brasefield, Board Engineer, dated 1/12/17
- A-6 Affidavit of Service with Hearing Notice
- A-7 Affidavit of Publication

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

- A-8 One page color drawing view from south of property
- A-9 One page color drawing view of Scow Ditch from the SW looking East
- A-10 Double-sided colored photos, one side with 2 color drawings with shaded proposed construction, and the other side with 4 color photographs of existing property

Mr. Jackson stated this property is what was known for many years as the Applegate Hardware store, a well known, prominent building in town. He further stated that in June, 2012 his clients appeared before this Board and received approval to put two apartments above the refurbished Applegate's Hardware. His clients were under contract to purchase the premises prior to Superstorm Sandy; Sandy hit and they closed a couple of days later. Mr. Jackson stated that originally the Younghans' vision was to keep the store downstairs, and have an apartment upstairs for themselves and then for their parents. Mr. Jackson further indicated that as time went on and as they rented out the bottom store to craft-type stores where things are made, in order to preserve the commercial character which was there for many years, their parents rehabilitated the houses they had and plans changed. The parents now have a condominium and there is no longer a need to have two apartments upstairs.

Mr. Jackson stated what they seek to do now is to reduce the non-conformity, bring it into conformity in terms of use, and convert this to a much smaller, one-family unit that the Younghans will use. They feel by reducing the scale, it is a better fit as well as a good thing to have an owner-occupied commercial building with the landlord/owner living upstairs so they can keep a very close eye on managing the downstairs tenants. They will have an investment in it and be there on a regular basis to make sure everything is run well.

Mr. Jackson stated there is a question as to whether or not what is proposed is 2 1/2 stories or 3 stories, and the important thing they ask the Board to consider is that it is under the height regardless, so they are not seeking a height variance. Mr. Jackson pointed out he did the notice for 3 stories just in case, but submitted the proofs will show that where this property is located, which is in a commercial area overlooking the ditch and the tennis courts of the Bay Head Yacht Club, where the rear deck and third story are, it is isolated from any other residential areas. Mr. Jackson further stated they feel this is a very good location to allow them to take advantage of an outdoor area, have some upstairs living space, and it will not have any impact on the neighbors. He stated there is no intensity of use as they are going from two units to one unit and in light of the fact it is a commercial building and unlike in an ordinary residential setting, this is a place where there is supposed to be a lot of activity.

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

Jonathan Younghans, 1372 Outlook Drive, Mountainside, who caused to have the following marked into evidence:

- A-11 Architectural rendering of proposed construction with a street view of the building from the north heading south, prepared by Jeffrey G. Schneider.

- A-12 6 colored photographs and 8 black and white photographs depicting views of the area, and showing road and building construction
- A-13 Double-sided board of 15 photographs showing before and after shots of the building itself

Jeffrey G. Schneider, P.O. Box 356, Bay Head, licensed architect in NJ since 2001 as well as in Vermont

William J. Taylor, P.E., 1838 Beach Boulevard, Point Pleasant, professional Engineer, who caused to have A-14, a black and white aerial view from Google Maps dated approximately 2012, marked into evidence.

Mr. Jackson additionally caused to have A-15, a black and white rendering of the Application for Development which was approved in 2012, marked into evidence.

After a brief break and additional testimony from the witnesses, Mr. Furze opened the meeting to the public for comments. The following person was sworn in by Mr. Zabarsky and gave his testimony:

Mark Durham, 520 Lake Avenue.

After the Board members were caucused, a motion was made by Kathleen Tell and seconded by Patricia Wojcik to approve the application on the condition that the use of the top floor deck is limited to the walled-in section as shown on the plans and will not continue beyond same, and that the previously approved application is voluntarily abandoned by the applicants and will become null and void. Roll call: YEAS: Kathleen Tell, Patricia Wojcik, John Henry Morris, Robert Hein, R. Neil Devesty, Thomas Charlton. NAYS: William Furze

Mr. Furze stated therefore the next **application** to be heard this evening is that of Katherine O'Hara and Amanda Murphy, 42 Bridge Avenue, a/k/a Block 30, Lot 14.

Mr. Zabarsky wanted to go over some procedural issues first. He asked Adam Steuerman, Esq., attorney for applicants, to come up, and indicated Roger J. McLaughlin, Esq. was there to represent an interested party, Val Skinner. Mr. Zabarsky stated there was an issue raised with regards to notice and jurisdiction by Mr. McLaughlin.

Adam Steuerman, Esq., of the firm Sinn, Fitzsimmons, Cantoli, Bogan, West & Steuerman, P.C., 501 Trenton Avenue, Point Pleasant Beach, NJ came forward. Mr. Steuerman stated he represents the applicants who own an irregular "T"-shaped lot which is located in an R-50 zone and is approximately 7,000 square feet. The property contains a single, 2 story home with a detached garage and a 25' wide by 100' deep paver driveway.

Mr. Zabarsky stated he received a letter from Mr. McLaughlin, addressed to the Planning Board and dated January 17, 2017, which the Clerk indicated had not been generated to the Board. He stated he would let Mr. McLaughlin put his appearance and arguments on the record as they do pertain to the documents in Board members' packets.

Roger J. McLaughlin, Esq., of the firm McLaughlin, Stauffer & Shaklee, P.C., Monmouth Shores Corporate Park, 4814 Outlook Drive, Wall, NJ came forward. Mr. McLaughlin stated he represents Val Skinner who lives in one of the contiguous properties to the south and west of the driveway just described. He stated they have a number of substantive and procedural objections to the application. Mr. McLaughlin further stated it is their position that the plans submitted do not accurately reflect the conditions on the ground and are not complete in terms of their presentation to the Board.

Mr. McLaughlin stated his first procedural objection is the plans do not show the two existing easements which burden the paved driveway. Mr. McLaughlin stated there is a five foot easement of record that benefits his client's lot, Lot 13, which runs the entire 100 foot length of the driveway. Mr. McLaughlin further stated there are also two easements of record which run along the eastern side of the driveway and benefit Lot 12 and burden the subject property, one of which is ten feet wide and runs back eight from the street, and the other is five feet wide and runs the additional twenty feet back to the end of the stem of this lot. Mr. McLaughlin stated they are both of record and it is his understanding that at the time this application was filed, there is a box on the application form which states that if there are any easements or restrictions, it needs to be checked and only one of the easements was included in the packets, but in any case, neither one of the easements are shown on the plan. Mr. McLaughlin stated this is obviously of substantial importance because part of the proposal to the Board is to have two parking spaces in that driveway as our Ordinance requires two parking spaces per single family lot and stated absent the ability to show parking spaces, several variances would be required from our regulations. Mr. McLaughlin further stated it was his belief the Board should not entertain the application until such time as a complete and accurate plan is presented to the Board and the Board's professionals.

Mr. McLaughlin further stated his second procedural objection is the fact that the parking is shown in an area covered by easement where parking would not be permitted. He stated this means there are no parking spaces shown on the property in question which are proposed, and that would require several additional variances not requested, either in the application or in the notice to property owners. Mr. McLaughlin reiterated those easements are of record, not implied, and they are in everybody's chain of title which he provided to the Board for both easements along with his letter.

Mr. McLaughlin stated he raised other issues as well and will leave those to his letter, but he feels these two aspects of the jurisdictional issue dictate the applicants should be required to submit complete, accurate plans to the Board before they hear the application.

Mr. Steuerman stated his response to the first of Mr. McLaughlin's argument that the plans do not show the easements of record, is that there is no requirement in the Borough ordinance that in the absence of a subdivision or a conditional use variance, or a variance in connection with a subdivision, that easements be shown on the plans. He referred to Chapter 147-44 B of the Borough Code wherein it does not list easements need to be listed on the plans, whereas in Chapter 147-44 A in connection with cases of subdivision or relief under conditional use variances, it does indicate that easements and right-of-ways do need to be listed on the plans.

Mr. Steuerman additionally stated the only two parties affected by the easements are on notice to these easements – those being Ms. Skinner, the owner of Lot 13 as well as the owner of Lot 12, both of whom have lived with the easements and were clearly on notice of same, and have utilized the driveway for however long the easements have been in place. Mr. Steuerman indicated they are providing tonight updated plans showing the easements of record. Mr. Zabarsky noted Mr. Steuerman was pointing to plans on an easel. He asked Mr. Steuerman if those updated plans were in the Board members' packets and the response was there were copies which were going to be distributed to the Board members this evening, to which Mr. Zabarsky requested he not refer to anything which had not been provided to the Board prior to this evening, and which is not on file. Mr. Steuerman stated the driveway configuration is not changing and they are not proposing any alterations to the driveway; that the driveway proposed is where his clients park and have been parking for the past few years so what is being proposed is exactly the way it is right now.

Mr. Zabarsky asked Mr. Steuerman to address argument one regarding deed restrictions to be attached to a copy of the application, which had been checked off as "yes", and had the clerk enter into evidence:

A-1 Development application

A-2 Easement Agreement between Spindler/Spindler-Brown and Schlotzhauer/McHugh dated July 30, 1987

Mr. Zabarsky pointed out that in A-2, it alludes to an attached Deed and asked if members had that document in their packet as well. Mrs. Tell confirmed they did not. Mr. Hein stated he plotted it out and it was not written anywhere in the application or paperwork provided that the easement went the full length of the driveway, so there must something else that covers that. Mrs. Tell said they need all the easements. Mr. Zabarsky stated the application says any deed restrictions, covenants or easements affecting the subject property, and if yes, attach a copy to the application for development, and Mr. McLaughlin is suggesting other easements and descriptions which have not been provided are part of the application. Mr. Zabarsky further stated they are not shown on the map which is the second part of the argument. Mr. Steuerman said that technically the Board had copies of the easements, and Mr. McLaughlin attached copies of the Deeds which reference predecessor easements. Mr. Zabarsky stated they were not spelled out in the document provided, and were only referenced. Mr. Zabarsky knew what it is because he had it as of yesterday, having been provided to him by Mr. McLaughlin, but Board members and the public didn't have it, and they had to be provided ten days prior to the hearing.

Mr. Zabarsky further stated he had conversations with both Messrs. Steuerman and McLaughlin and suggested if they felt there was a problem and needed an adjournment, to let the Board know and send a letter, and the Board would consider it so they all didn't have to attend this evening. Mr. Zabarsky questioned whether everyone had the easements and the answer is no. He further went on to explain that this Board has always asked anything affecting a property be shown on the plan and they have adjourned meetings many times and required applicants to return with plans showing what affects the property, whether it be easements or whatever. Additionally, Bay Head's Ordinance specifically says for subdivisions, you have to show all existing rights-of-

ways and easements. Mr. Zabarsky went on to site from Land Use Chapter 147-44 regarding subdivisions. Board members agreed they could not make a rational decision without knowing what they need to know about the property.

Mr. Zabarsky stated if applicants do not need a parking variance, he does not believe the notice is deficient, but feels the maps should be amended to reflect all the easements on this property. He stated that in any event, we cannot hear this application unless the Board has what it needs, at least in terms of the easements filed, ten days prior to the date of the next hearing. No re-notice is necessary.

A motion was made by Kathleen Tell and seconded by Robert Hein to adjourn this matter so that applicants are first on the Agenda for the next regular meeting date, namely, February 15, 2017, and that applicants provide any and all recorded easements on record for the subject property and amend the plot plan map to show the easements, at least ten days prior to the meeting, All in favor.

Under **Old Business** it was agreed the Board needed to schedule a date to do a preliminary re-examination of the Master Plan, which date was scheduled as Tuesday, February 7, 2017 at 7 pm at the Fire House. All members agreed they had a copy of the newly proposed document which they received via e-mail from the Board Clerk several days ago, and Mr. Morris confirmed this was different from the one they were handed at the December 21, 2016 meeting. Board members were told to use the one that was e-mailed to them instead. Mr. Hein suggested all members read the paperwork before attending the meeting so as to avoid wasting time, and said both he and Mr. Charlton had read the new one and have significant comments. Mrs. Tell stated it is a Planning Board function and confirmed this is important.

Under **New Business**, Mr. Devesty brought up the fact that the BHFD had several fire calls during the week while trucks were pulling up across the street at the restaurant to make deliveries. He stated the delivery trucks were unable to pull into the space because either the truck was too big or the driver didn't know how to pull into the spot. His concern was if this is happening in January when traffic is light or non-existent, when the summer comes along, this will be a problem. He cited what he believed were conflicting statements in the Resolution; one place stated mid-morning deliveries and in another, it stated no deliveries between 12 am and 6 am. Several members stated this was a police issue and others agreed it was not just deliveries for the restaurant, but for other businesses, i.e. Andi's, Dune Grass and Playa Bowls, as well. Mr. Hein stated he is working with Councilwoman Glass and the Business Association to attempt to get all of the businesses to meet before the summer so they, the business owners, will come up with a solution as it was a tremendous "problem this past summer with 18 wheelers stopped dead center in the middle of the street and just parking". Mr. Hein stated what he is hearing from the town is we cannot increase the size of the loading dock or make another loading zone. He is being informed by the businesses that they don't control the trucks and are sometimes not aware the truck is there, but he stated that Charlie's Restaurant is the only one with a loading dock. As far as the fire trucks not being able to pull back into the fire house after a call, Board members agreed the police know it is illegal and can ticket them, but Mr. Hein stated he is trying to find a viable solution everyone can work with, he just doesn't have one yet.

Mr. Devesty stated another matter of concern is there is a variance in the Borough which states that trash cans cannot be in sight, but he has noticed that on at least two properties in town, there are generators sitting on 6 foot platforms, located almost to the street, and are not very attractive. Mr. Furze stated that on at least one of the properties, it appears as though the placement of the generator is not proper. Mr. Zabarsky asked if they received a permit and a zoning permit, to which Mr. Furze replied they did, but his concern was if it was placed where it was approved, as it appeared to be in violation. He stated the other issue was for a generator, it has to be placed above base flood elevation so these are going to be appreciably high off the ground and difficult to screen. Mr. Furze agreed it was not 10 feet from the curb, but we don't know where the property line is located. He stated this particular property is a corner lot so the front yard setback can be reduced by half - 20 feet in the R-50 zone so it has to be 10 feet away.

Mrs. Tell suggested maybe we need an ordinance to prohibit generators in front yards or putting them someplace else. Mr. Furze stated they need to be sensitive to it but as it stands, you can put generators and HVAC into the front yard. He further stated that in preparation for the next meeting, he'll put a few bullets together so the Board can all talk about it and float it.

Sue Brasefield stated she has an e-mail she started with Bart which contains a list of things, and she will e-mail it to everyone. Mr. Charlton stated he thought there was a planning document which Maser Consulting was preparing to review all the Ordinances, as it seems this should be incorporated into that. Ms. Brasefield agreed and stated it was separate from the Master Plan.

Mr. Zabarsky stated he is still working on the ordinance for informal hearings.

Mr. Furze recognized that Mr. Zabarsky had put in a substantial amount of time on a certain application and questioned the Clerk as to how we were doing financially, seeing as how a fair amount, if not all, of the escrow monies must have been eaten up. Mrs. Tell questioned whether another applicant was up to date on their escrow monies and when the Clerk indicated there was still monies owed but this was for bills rendered by the professionals after the hearing date, Mr. Zabarsky requested to add to the list a replenishment of escrow monies before an application is heard by the Board, even if bills come in from the professionals the day before a hearing. In that case the applicant must pay the amount before their hearing, or they do not get heard.

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

The meeting **adjourned** on a motion by Neil Devesty and seconded by Patricia Wojcik. All were in favor.

Respectfully submitted,

Claire S. Hense