

Bay Head Planning Board
July 19, 2017

The meeting of the Bay Head Planning Board was held on Wednesday, July 19, 2017 at 7:30 PM.

Mrs. Tell 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: Kathleen Tell, John Henry Morris, Patricia Wojcik, William Curtis, Thomas Charlton, Neil Devesty, Kirsten Hinds, Kevin Feehan

Absent: William Furze, Mark Durham, Robert Hein, Frederick Applegate

The March 15, 2017 **Minutes** were approved on a motion by Kathleen Tell and seconded by John Henry Morris, and the March 29, 2017 **Minutes** were approved on a motion by William Curtis and seconded by John Henry Morris, with all in favor.

The following member was sworn in by Steven A. Zabarsky, Borough Attorney:

Alternate #1 – Kirsten L. Hinds

Mrs. Tell stated there are two **applications** to be heard this evening, but first she wanted to address that of LaManna Building & Land Co. regarding property located at 235 Lake Avenue, a/k/a Block 27, Lot 3.

Mrs. Tell stated she understood the notice was inadequate and there are errors in the application, therefore applicant has already agreed to postpone the hearing until our next regularly scheduled meeting so applicant can give proper notice. Mrs. Tell further stated Mr. Zabarsky intends to bring to applicant’s attorney’s attention the errors in the Development Application. Mr. Zabarsky stated that for the record, he was reading from a letter dated July 19, 2017 from applicant’s attorney’s office to the Board Clerk, wherein they requested the matter be carried to the July 19, 2017 meeting, without notice, due to insufficient noticing. Mr. Zabarsky marked this correspondence into evidence as Exhibit A-1.

Mr. Zabarsky stated that for the record, the notice did not include what was discovered during the Board Engineer’s review letter and that is that this is a 32.5 foot height maximum allowable and the development application states 35 feet, and the application has a lot width currently 50 feet, and the lot width, in fact, is 45 feet. Therefore, there must be a request for a lot width variance of five feet, and a height variance because although there is already a structure on the property, the proposal is to demolish the old structure and build a new structure so it is as though it is a vacant lot and they have a new slate. Mr. Zabarsky further stated that because those variances were not noted, new formal notice has to be given, and suggested Ms. Brasfield get a letter out advising applicant needs to amend the application as it is incorrect.

The next **application** on the agenda is that of Joseph and Dori Ann Vales regarding property located at 444 Lake Avenue, a/k/a Block 52, Lot 5.

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

Mr. Zabarsky stated Mr. Feehan wished to be recused as he is a current client of Mr. Gage's.

Mr. Gage stated the applicants wish to construct a 10' x 26' addition to an existing rear deck. Mr. Gage further stated the house is one of the oldest in town, built before there were any zoning ordinances, and therefore there are several non-conforming conditions which exist.

The following items were marked into evidence:

- A-1 Development application
- A-2 Zoning schedule
- A-3 Copy of denied zoning application dated 3/1/17
- A-4 Agreement between Edward L. Howe, etal. and Gertrude K. Holloway dated 3/11/1931
- A-5 Survey from Seneca Survey Co., Inc. dated 3/29/17
- A-6 Review letter from Susan S. Brasefield, Board Engineer, dated 6/7/17
- A-7 Notice of Hearing dated 7/6/17
- A-8 Affidavit of Publication

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

Joseph A. Vales, 444 Lake Avenue, who caused to have the following marked into evidence:

- A-9 Colored photograph of backyard and deck area
- A-10 Colored photograph of deck looking into neighbor's yard
- A-11 Colored photograph of side yard

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

The Board was polled and thereafter a motion was made by William Curtis and seconded by John Henry Morris to approve the application as presented. Yays: William Curtis, John Henry Morris, Patricia Wojcik, Thomas Charlton, Kirsten Hinds, Neil Devesty. Nays: Kathleen Tell

Under **Old Business**, Mr. Zabarsky advised both lawsuits by Waters and Rantz versus the Planning Board of the Borough of Bay Head regarding property located at 41 Egbert Street, have been consolidated by consent. One of the lawsuits was in front of presiding Judge Wellerson and the other one was before Judge Ford who is the assignment judge. Mr. Zabarsky further advised that Mr. Rantz's attorney is on Judge Ford's conflict list and cannot appear before her, which therefore made it easy to request the consolidation of the matters. In light of the foregoing, the case will be heard by Judge Wellerson.

Mr. Zabarsky stated there will be a pretrial conference in a couple of weeks and he will be filing a pretrial memorandum, copies of which he will send to the Board members for review. Mr.

Zabarsky described what would happen at the pretrial conference, and stated the Waters', who were the applicants, filed an appeal saying the Board did not formally vote on the shower part of the application, only upon the toilet and sink, and Mr. Rantz is objecting to the Certificate of Non-Conformity regarding the toilet and sink. The Board had no comments.

Mrs. Tell stated that with regard to the proposed Land Use revisions from Mr. Furze, she felt they needed additional information to make things more clear. Ms. Brasefield stated she would address all of Mr. Furze's bulleted points and would list what Maser did. Ms. Brasefield further stated that if she could think of any other options, she would make more bulleted points.

Ms. Brasefield stated she and the Board Clerk spoke before the meeting about the formal adoption of the Master Plan. What Ms. Brasefield wanted to know was if the Board wanted to do that at the next meeting, as we've already done part of the public hearings for the DCA and submitted for approval. Ms. Brasefield further stated the next step for formal adoption is we are required to notice the Ocean County Planning Board and to send a copy of the Master Plan, and as a courtesy, the Borough has also been sending copies to the adjacent towns. Typically what we should do is open it to the public for a last public comment period before it is adopted that night.

Mrs. Tell suggested the Board wait until the September meeting when we will hopefully have the strength of a full Board so everyone has an opportunity to discuss it once more. Mr. Charlton wanted to know if it was available to the public for review and Ms. Brasefield stated she would give it to the Municipal Clerk to post on the Borough website. Mrs. Tell suggested the Board discuss this again in August and look to vote on it in September.

There was no **New Business**.

Public Discussion:

Lisa Baney, 421 Lake Avenue, came forth.

Ms. Baney, who lives near the Bridge Avenue intersection, indicated she missed all of the meetings for the Atlantic Pier Co. application for Charlie's of Bay Head restaurant, as well as for the Shopper's Village. Ms. Baney stated she is concerned with the direction and growth of the town, as well as the impact upon the neighbors, especially the impact of noise, traffic and parking. Ms. Baney indicated she wanted the Board to be aware of the palpable changes to the town, and further questioned if any Board members could recall changes to the seating size at the restaurant from the time of the application until the Resolution, as the "maximum capacity" sign inside the restaurant states 287. A Board member indicated that the seating capacity is set by the Fire Marshal and includes employees and people at the bar, and Ms. Baney stated that speaks to intensity of use which creates more vehicles and traffic.

Ms. Wojcik stated she recalled the original number of seats came down and she could not recall it climbing back up. Mrs. Tell stated her recollection is that the original plan was fewer, under 100, and then there was a second plan rumored to be 225, then there was community push-back, and the actual filed plan was for 186.

Ms. Baney further observed the empty lot/construction site where the Shoppers Village is to be constructed has been more of an eyesore to the neighborhood than she and others thought, and she realized this is better addressed to the Council than the Planning Board. Ms. Baney indicated there are dumpsters on site being loaded and unloaded even though there is no construction underway right now, with a lot of “beeping” due to backing up of vehicles especially on Fridays as well as Monday mornings, a lot of back and forth/in and out, gravel, the valet parking, and she believes the people at Playa Bowls are finally getting the message to not dump their blender drinks in the dumpsters.

More importantly, Ms. Baney wanted to point out it has not been an inactive construction site – there has been a lot of noise and the neighbors are trying to get through it and unlike post-Sandy, which was an emergency, this is not so they are trying to adjust. Ms. Baney observed she is trying to wrap her mind around looking forward to the future and questioned if anyone remembered not just the height of the buildings for the new Shoppers Village, but of the rotunda where the elevator will be located, as well as the cupolas, relative to Dorcas’. Mr. Morris and Ms. Brasefield addressed those questions.

A motion was made by John Henry Morris and seconded by Patricia Wojcik to approve the **vouchers**. All were in favor.

The meeting **adjourned** on a motion by William Curtis and seconded by John Henry Morris. All were in favor.

Respectfully submitted,

Claire S. Hense