

Bay Head Planning Board
March 15, 2017

The meeting of the Bay Head Planning Board was held on Wednesday, March 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, Mark Durham, Robert Hein, Thomas Charlton, Neil Devesty
Absent: William Curtis and Frederick Applegate

The January 18, 2017 **Minutes** were approved on a motion by Neil Devesty and seconded by Thomas Charlton, 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 Robert Hein 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 Kathleen Tell 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 Neil Devesty and seconded by Robert Hein to designate meeting dates and time as Wednesday, April 19, 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 one Resolution for review, that being the **Resolution** of Outlook Partners, LLC, 524 Lake Avenue, a/k/a Block 53, Lot 1 which was approved at the meeting of January 18, 2017. A motion was made by Kathleen Tell and seconded by Robert Hein to approve the Resolution. Roll call: YEAS: Kathleen Tell, Robert Hein, John Henry Morris, Patricia Wojcik, Thomas Charlton, Neil Devesty.

Mr. Furze stated there are two applications on tonight's agenda and the first **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 stated the Board received a letter dated March 13, 2017 from Mr. McLaughlin's office, the attorney for the objector Val Skinner, stating that Mr. McLaughlin was stuck in Florida until Wednesday night due to the impending winter storm and therefore requested the matter be carried to the Board's next meeting on April 19, 2017. Mr. Zabarsky further stated that upon receipt of the letter from the Board Clerk, he contacted applicants' attorney Robert Shea, Esq., who was also copied on this letter, as was Ms. Skinner and Mr. Kociuba, their professional planner. Based upon his telephone conversation with Mr. Shea, Mr. Shea stated that on the record, he would like to formally object to the meeting being adjourned, but understood based upon their legal discussion that it would be difficult to deny the request considering the storm.

The meeting was opened to the public in case anyone was in attendance and planned on hearing this matter, but was unaware it was being carried. There was no comment.

A motion was made by Kathleen Tell and seconded by William Furze to carry this application to the next regularly scheduled meeting on April 19, 2017, and without further notice. All in favor.

Mr. Zabarsky stated that before we get to the next application on the agenda, he had a brief discussion with regard to the next application on the agenda, and maybe it would be a summary situation.

Mr. Furze agreed and stated therefore the next **application** to be considered this evening is that of 700 Clayton Avenue Securities Trading Co., L.P., 700 Clayton Avenue, a/k/a Block 67, Lots 6.03, 6.03, 8.02 and 8.03.

Chad Warnken, Esq., of Archer & Greiner, P.C., Red Bank, NJ, attorney for the applicant, came forth.

Mr. Zabarsky stated the Chairman had an observation he wants to put on the record, and Mr. Zabarsky had an observation which he and Mr. Warnken discussed today.

Mr. Furze stated he just received the site plan documentation and was concerned it was not received in a timely manner, and in any event, he just received the Board Engineer's review letter. Susan Brasefield apologized as there was a communication mix-up. She didn't believe the matter was going to be heard this evening so she did not send the letter. Mr. Furze stated he was not feeling very equitable, and was speaking on behalf of himself and the Board, to hear this application this evening. Mr. Furze stated he could quickly go through the documentation but didn't feel this was a good time to hear same because of the timing involved. For the record, Mr. Zabarsky stated the review letter was dated March 13, 2017.

Mr. Warnken stated he believes it is a relatively straightforward application, his client was here this evening, and at this time, they would like to present it.

Mr. Zabarsky stated he spoke with Mr. Warnken earlier, and Mr. Hein approached him with the same issue. The issue is whether or not the Board has jurisdiction to adjust a lot line that sits in the Barnegat Bay, and stated he believes that he doesn't believe its within the confines of the Borough of Bay Head. Mr. Zabarsky stated Mr. Hein did check with the Tax Assessor, Mike Imbriaco, and for the record, the riparian, which is in fact a grant, there is no documentation attached to the application regarding the nature of what was titled to the applicant or any predecessor in title. Mr. Zabarsky stated the Tax Assessor advises the riparian is not a separately assessed taxed lot - it is taxed within the upland lot so it is not separately assessed and taxed by the Borough of Bay Head. It is included with the upland lot.

Mr. Zabarsky stated he is then back to his question regarding the Barnegat Bay which is jurisdictionally within the purview of the State of NJ. Mr. Zabarsky stated the Board has a substantial question as to whether we need a letter from the State saying we do have the authority to adjust the lot line on a riparian if this was a grant. Mr. Zabarsky reiterated we don't have the documentation as to what exactly this is and assuming everything the Board is being told is true, that this is a grant in fee simple, and the State has absolved itself of any ownership of the property, (a) the Board still wants to see exactly what it was, and (b) the Board would feel a lot better if we knew from the State of NJ that we, as a local Planning Board, that owns or has jurisdiction over lands within our municipality, still has jurisdiction to move riparian lot lines. Mr. Warnken stated he was basing it upon the previous Resolution by the Board which he did not originally handle.

After Board members reviewed the previous Resolution and accompanying paperwork, Mrs. Tell stated she was not sure how to answer the questions posed by Mr. Zabarsky. She stated she understood the applicant was relying upon that but she didn't see anything in the Resolution that suggests we created those lots, and she wasn't sure how to proceed. Mr. Hein stated there were a lot of questions and suggested the Board maybe take some time to get some answers. Mr. Zabarsky stated he didn't like it, unfortunately he didn't have the map as he would have liked to research these issues, and he didn't want the Board to take jurisdiction, which it may or may not have, and start hearing the matter.

Mr. Warnken requested a few additional minutes in order to speak with his clients while the Board hears the next application.

Mr. Furze stated the next **application** to be heard this evening is that of Playa Bowls, 62 Bridge Avenue, a/k/a Block 25, Lot 5.

Robert Giuliani, 804 Ocean Avenue, Belmar, NJ and **Gary Moss**, Vice President of Operations came forth.

Mr. Giuliani stated he is the owner of Playa Bowls, and they are back before the Board in order to extend their former seasonal Resolution in order to operate year-round, to extend their hours to close at 7 p.m. six (6) months out of the year and the other six (6) months to close at 5 p.m., and to serve hot coffee.

The following items were marked into evidence:

- A-1 Development application
- A-2 Resolution 2016-02 dated May 18, 2016
- A-3 Resolution 2016-07 dated November 9, 2016
- A-4 Review letter from Susan S. Brasefield, Board Engineer, dated February 10, 2017
- A-5 Hearing Notice Affidavit
- A-6 Affidavit of Publication

Mr. Zabarsky did a recap for the record of the past hearings and stated at the time of the first hearing, a site plan was not necessitated because it was only going to be a three month operation. He further stated when they returned the second time, because they were a seasonal business and not a year-round business, a site plan was not required with regard to issues of lighting, deliveries, hours of operation, signage, and refuse. Mr. Zabarsky stated at this point the Board needed to consider that a site plan is necessary as the business has been in operation for almost one (1) year.

Mr. Moss stated he was informed by the former Zoning Officer they would not need a site plan as they were not going to be open beyond sunset, but they would need one if they were planning on remaining open past 7 p.m., as well as a lighting plan. He further stated they would have had one and been prepared had they known they needed one. Ms. Brasefield stated the reason a site plan was not originally required was partly because it was originally intended to only be open for three months, but also because it was part of the original site plan and these buildings were going to be demolished.

Mr. Giuliani stated they were originally going to be open for only last season and the plan by the owner was to demolish the buildings in September, 2016. Due to the fact the owner of the buildings is not scheduled to do demolition until fall, 2017, they desired to remain open for an additional season, and he would like to be part of their plan for the new construction. Mr. Zabarsky stated it is not exempt from a site plan and therefore one is required. He wanted to caution the Board that this is a commercial establishment and cannot operate in this municipality without a site plan. It was Mr. Zabarsky's opinion that it violates our Ordinance and we have to pay careful attention to it under the circumstances. Mr. Zabarsky stated we took that into consideration when it granted the original application for three months but now it is going to be

over one year and we don't know when it is going to terminate. The applicant is asking to allow then to continue to operate year-round and we will see when the building is going to be demolished.

Mrs. Tell stated the best course would be to continue this for one month and applicant should supply a site plan, and they should be allowed to continue the operation. She also acknowledged audience members and stated the Board would get to them.

Mr. Hein stated he was very happy they were as successful as they seem to be, however, he has had nothing but continual problems with regard to the operation. He listed the difficulties and stated neither owner would respond to any of the issues presented to him all through the summer and into the fall of last year. Mr. Hein stated we continued to give applicant breaks – he left messages and phone calls, as well as visited. Mr. Hein further stated there are problems which have already been brought up with regards to garbage disposal, deliveries, the signage issue, and he feels the Board has been more than gracious in allowing applicant to remain open. He acknowledged they are a new business so he attempted to cut them some slack.

Mr. Zabarsky reiterated the Board requires a full site plan prepared by and certified by an engineer, that meets the requirements of the Borough's ordinance, and it must be on file at least ten days prior to the next meeting. Seeing as how the Board Clerk would be leaving for vacation, it was agreed the site plan must be in the office by Friday, April 7, 2017 in order to allow time to get the packets to the Board members.

Mr. Furze opened the meeting to the public for comments. The following persons were sworn in by Mr. Zabarsky and gave their testimony:

Ellen Tobin, 50 Bridge Avenue, Bay Head, NJ

Wendy Dinneen, 64 Bridge Avenue, Bay Head, NJ

Jacqueline Burke, 333 East Avenue, Bay Head, NJ

Mr. Devesty suggested the landlord might want to be present at the next meeting so he can give the Board an idea of what his plans are going to be down the road, as well as what is going on now to take care of this existing problem so it no longer exists when he makes his changes. Mr. Zabarsky stated that would be up to the applicant. Mr. Furze suggested maybe the landlord would like to share the trash receiving area for the restaurant, Charlie's of Bay Head, with the applicant.

A motion was made by Mark Durham and seconded by Robert Hein to close the meeting to the public.

After the Board members were caucused, a motion was made by Kathleen Tell and seconded by Neil Devesty to carry the application to the next meeting, namely, April 19, 2017 with no further notice, and with applicant being allowed to continue business until a site plan is provided by April 7, 2017, and if said complete site plan is not filed with the Clerk by April 7, 2017, the

business will be closed until further notice. Roll call: YEAS: Kathleen Tell, Neil Devesty, William Furze, John Henry Morris, Patricia Wojcik, Thomas Charlton NAYS: Robert Hein

The Board returned to the **application** of 700 Clayton Avenue Securities Trading Co., L.P.

After some back and forth conversations, it was agreed to carry this matter so additional documents could be provided and viewed. A motion was made by Kathleen Tell and seconded by Robert Hein to carry this application to the next regularly scheduled meeting on April 19, 2017, and without further notice. All in favor.

Under **Old Business**, Mr. Furze reminded the Board Engineer she promised an electronic copy of the most recent proposed changes to the Master Plan and Ms. Brasefield stated she would mail him a copy. Ms. Brasefield stated she would like to schedule another special meeting to go over the neighborhood plan. She stated she has a draft almost ready. Mr. Zabarsky stated under the Open Public Meetings Act, the Board must give forty-eight (48) hours' notice for an emergency meeting and Ms. Brasefield stated she would e-mail the revisions to members. After consulting their schedules, the Board scheduled a special meeting for Wednesday, March 29, 2017 at 7 p.m.

Under **New Business**, Mr. Hein suggested the table at which Ms. Brasefield and Mr. Zabarsky sit should be turned sideways and he would personally move it.

Mr. Zabarsky stated that Edward Liston, Esq. has filed a lawsuit on behalf of Mr. Rantz against the Board and the Waters' for the granting of the pre-existing, non-conforming toilet and sink. He further stated he filed an answer on behalf of the Board, that the Waters' will probably have their Princeton attorney handle the matter for them, and he will defend the actions of the Board. He stated Mr. Rantz has to prove the actions of the Board were arbitrary and capricious, or unreasonable, which he does not feel they were. Mr. Zabarsky stated the only thing he noted in their Complaint is they believe Mr. Petrillo should not have made some of the comments he allegedly did to people who came to see him about this regarding what was going on before, and should not have given any testimony. Mr. Zabarsky stated there are cases which are very clear, and he does not believe that Mr. Petrillo loses the right as a Board member or employee of the municipality to give testimony to the Board. He further stated Mr. Gage called Mr. Petrillo as the Zoning Officer and asked how in his capacity he had previously interpreted this, and Mr. Zabarsky stated he thought that was completely appropriate. Mr. Zabarsky further stated Mr. Petrillo could have answered from the dais but he recused himself because of the allegations that he had somehow gotten more involved than he should have prior to the application. Mr. Zabarsky stated he does not think this is going to be a reversible situation. When asked by Mr. Hein how long he thought this would take, Mr. Zabarsky stated it would take between six to nine months.

Ms. Wojcik returned to the 700 Clayton Avenue Securities Trading Co. application and stated that with regard to the riparian grants, she is informed that all the paperwork originally from her office was put into a trailer after Superstorm Sandy, and she is assuming it was brought back, but there are copies of all the riparian grants. She further stated it is in the same file as all the Deeds.

Mrs. Tell stated the Board should give some thought to crafting a rule against sleeping in a garage, as the current wording is vague. Her concern was regarding a property located next door to the Turton realty building, as the contractor told people they were building a bedroom in the garage. Mr. Hein questioned “what is habitable space?” and Mrs. Tell stated we need to change the definition of a dwelling. Mr. Zabarsky gave the definition of a dwelling and there ensued a discussion about it.

Mr. Durham questioned what constitutes a renovation or a variance required situation on a house under renovation. Mr. Zabarsky stated if a house is under renovation, if there are any pre-existing, non-conforming conditions or previously approved variances for that structure, we have always interpreted if the addition or renovation is not in the encroachment, such as if you’re adding a second story but not in the encroachment area if there’s already a structure in a setback, then you’re adding something that’s not in the setback, or because you’re adding to a non-conforming structure, you wouldn’t need a variance.

He questioned whether someone can add second floor decks on rooflines that never had decks and Mr. Zabarsky stated yes they can so long as it’s conforming. Mr. Zabarsky stated one would first need a zoning permit before they could get a building permit. The zoning permit will tell you whether or not you conform to the zone based upon your plan, and then you can get a building permit. The concern in this particular instance is regarding a house on Bridge Avenue which is adding a deck to the third floor and there are questions as to whether or not it exceeds 75 square feet. Mr. Furze believes the aggregate is 75 square feet and is not 75 square feet per deck.

Mr. Zabarsky quoted from the Code, more specifically as to “Decks” in 147:65 and stated that is for “A deck”, it does not state you cannot have more than one, and that would be his interpretation. Mr. Furze stated he is convinced they are in violation unless someone else can show him differently, and his interpretation was it was 75 square feet in the aggregate.

Mr. Furze stated he was not going to open the meeting to public discussion as there was no one present.

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

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

Respectfully submitted,

Claire S. Hense