

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

The meeting of the Bay Head Planning Board was held on Wednesday, October 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, John Henry Morris, Patricia Wojcik, Mark Durham, William Curtis, Neil Devesty, Robert Hein, Thomas Charlton, Kirsten Hinds, Kevin Feehan  
Absent: Kathleen Tell

Mr. Furze stated the Board had two Resolutions for review, the first being the **Resolution** of Frank Ronan, 425 East Avenue, a/k/a Block 40, Lot 20 which was approved at the meeting of September 20, 2017. A motion was made by William Curtis and seconded by Neil Devesty to approve the Resolution. Roll call: YEAS: William Curtis, Neil Devesty, John Henry Morris, Patricia Wojcik, Mark Durham, Thomas Charlton, Kirsten Hinds.

Mr. Furze stated the second **Resolution** for review is that of Thomas Pryma, 867 East Avenue, a/k/a Block 81, Lot 1, which was approved at the meeting of September 20, 2017. A motion was made by Mark Durham and seconded by John Henry Morris to approve the Resolution. Roll call: YEAS: Mark Durham, John Henry Morris, William Furze, Patricia Wojcik, William Curtis, Neil Devesty, Thomas Charlton, Kirsten Hinds.

Mr. Furze stated there was one **application** to be heard this evening, that of Angelo Cifelli, 153 Osborne Avenue, a/k/a Block 3, Lot 6.

Roberta Burcz stated she has a Power of Attorney and is attending as a fact witness.

The following items were marked into evidence:

- A-1 Development Application
- A-2 Four color photos, 2 each of current property and proposed building
- A-3 Survey from Ronald W. Post dated 8/19/14
- A-4 Review letter from Susan S. Brasefield, Board Engineer, dated 10/12/17
- A-5 Power of Attorney from Angelo Cifelli to Roberta Anne Burcz, Esq. dated 10/14/17
- A-6 Hearing Notice Affidavit
- A-7 Affidavit of Publication
- A-8 Letter from applicant dated 9/5/17
- A-9 Zoning permit denial dated 5/18/17 from Ted Bianchi, Zoning Officer

Mr. Zabarsky swore in the following witness:

**Roberta Anne Burcz, Esq.**, residing at 203 Osborne Avenue, with offices located at 129 Bay Avenue, Bay Head, who is attending as a fact witness and the applicant's agent, testified she had a little history of the property. Ms. Burcz stated it was a fully conforming lot before Sandy upon which Mr. Cifelli planned to build a modular home. She stated she started the foundation and then the storm came, so they stopped construction and added some courses of concrete. Ms. Burcz testified the distance from the top of the garage door to the top of the building is a very large, flat area which was not planned. She further stated the size of the blank wall increased because the building had to be raised. Ms. Burcz stated the applicant submitted a zoning application for the garage overhang, which was denied, and she was a little surprised because upon viewing the Ordinances of the Borough, on page 3 the definition of building line states that "any open steps, cornices or any other ornamental features projecting from the walls of the building of the structure are not to be included in counting where the building line occurs". Ms. Burcz stated she is not sure why the zoning permit was denied, based upon this definition.

Mr. Zabarsky pointed out there is a specific statutory cite or provision in this application (he cited the statute) which specifically provides for appeals involving the interpretation of the Ordinance or permit denial by the zoning officer, and that appeal is filed within twenty days, transmitted to the Board, and then we have a hearing and therefore, he wanted to be clear that is not before the Board tonight. Mr. Zabarsky stated there is no appeal to the Zoning Board and he does not want this Board to go in the direction of the issue being whether or not a variance is needed, because this applicant has not brought that before the Board and it is therefore improper to argue. Mr. Zabarsky instructed the Board that the applicant is here for a variance.

Ms. Burcz stated she wanted to point out that the zoning ordinance, on page 18, talks about structures and measuring things, and says that eaves may project not more than one foot into the required front yard or rear yard which is what is being requested here. Ms. Burcz stated in addition to that, what is being proposed here is an eave/awning/portico – whatever you want to call it – over the exterior of the garage door. Ms. Burcz described the materials which will be used, the size of the window, and the purpose for same. Ms. Burcz stated applicant also plans to install a round window above the garage doors, and install a ceiling fan inside the garage for purposes of air circulation to reduce the heat inside.

Mr. Zabarsky stated the application did not include the window, and Board members weighed in and agreed it enhances the aesthetics and stated the applicant would just need to apply for a building permit for the window.

The Board was polled and thereafter a motion was made by Patricia Wojcik and seconded by Thomas Charlton to approve this application. Yays: Patricia Wojcik, Thomas Charlton, William Furze, John Henry Morris, Mark Durham, William Curtis, Neil Devesty, Robert Hein, Kirsten Hinds

There was no **Old Business**.

Under **New Business**, Mr. Zabarsky stated Verizon Wireless is proposing to construct small network nodes on existing utility poles. Mr. Zabarsky stated the Board received packets from Mr. Offen with regard to the matter, which contained a letter dated October 3, 2017 from Mr.

Offen. Mr. Zabarsky stated there is a little history here in that this has been going on in the municipality for a while and there is a Resolution adopted by the Mayor and Council, #2017-020, which authorizes the Planning Board to provide an advisory opinion. Mr. Zabarsky further stated Verizon, pursuant to State Statute NJSA 48:3-19, our State law with regard to public utilities specifically provides “the consent of the municipality shall be obtained for the use by the person of the poles of another person”, and in this case is the utility poles of First Energy and Verizon, and then Verizon has a lawful right to maintain such poles in “such street, highway or public place”, and stated most of the poles, he believed, are in the public right-of-way.

Mr. Zabarsky stated it has been referred to this Board for an advisory opinion due to a couple of things, one of which is to get a look at what the nodes look like. Mr. Zabarsky further stated he went into his Seaside Park packet and pulled out a few photos which show actual poles with nodes and antennas on top, and wanted Mr. Offen to go through them as the Board goes along. Mr. Zabarsky stated another reason they are here is because there was a discussion about whether ultimately a site plan would be needed or not, and stated use does not seem to be an issue. Mr. Zabarsky advised the Board they should note the Municipal Land Use law 2012 was amended for this very type of issue and provides for exempting site plan for this. Mr. Zabarsky further stated that however, there is criteria in the statute, and what it says is that an application for development to collocate wireless communications equipment on a wireless communications support structure, includes utility poles, and is not subject to site plans under certain specifications. Mr. Zabarsky cited same, one of which is that the overall height of the wireless communications support is not greater than by more than 10%, and he believed we were going to see that some proposals are going to be maybe a little more than 10%, although he didn’t know if that was a strict application. Mr. Zabarsky stated what we are about to hear is about nodes, but he would let Mr. Offen explain everything to the Board.

**Steven M. Offen, Esq.** of Norris, McLaughlin & Marcus, P.A., 400 Crossing Boulevard, Bridgewater, NJ came to the podium. Mr. Offen stated his client is Celco Partnership, d/b/a Verizon Wireless, a wireless entity which is not a public utility in New Jersey. He further stated the wireless carriers in NJ are not public utilities, and his client is wholly owned by Verizon Communication. Mr. Offen stated the landline incumbent phone company is here this evening – Verizon New Jersey – which is a public utility, and as counsel indicated, the incumbent electric utility is JCP&L. Mr. Offen further stated that the way the NJ Statute is set up is if someone wants to put something on the utility poles and they are not a utility, such as Verizon Wireless which is not a utility, they have to get the consent of the municipality, which is how they ended up coming to Bay Head. Mr. Offen stated that in addition, they have to have an agreement with the utility, and Verizon Wireless has agreements with PSE&G, JCP&L, Atlantic City Electric and Verizon New Jersey.

Mr. Offen further described the program his client is undertaking is not just in Ocean County, but throughout the whole State and the whole country. Mr. Offen described the steps the FCC requires in New Jersey and stated Verizon Wireless has applied to over 525 municipalities in the State of New Jersey and currently has received approximately 250 consents. Mr. Offen described the purpose and necessity of the proposed nodes at five separate sites in Bay Head, which sites were decided upon based upon radio frequency evaluations, in order to enhance and ensure coverage for the next generation, i.e., 5G. Mr. Offen stated the drain on the networks will

be considerable at that point in time as “there will be a lot of traffic going through that pipeline and these nodes are designed in to help make sure Verizon Wireless is able to meet that need”.

Mr. Offen mentioned a Federal Statute, the Telecommunications Act of 1996, wherein it essentially required the use of right-of-ways, and stated the public municipalities have the right to impose reasonable restrictions. Mr. Offen stated that in his opinion, a local jurisdiction does not have the right to deny a wireless carrier from putting these in to the rights-of-way. Mr. Offen stated the present administration is very concerned about the prompt employment of this technology, and they sent packets of information about this to the Borough Council on November 1, 2016 with a proposed resolution, some background information including the photographs Mr. Zabarsky mentioned, with a request that consent be given for them to build on the utility poles. Mr. Offen followed the course of what transpired with the Borough attorney and Council up to this point. Mr. Offen reiterated what Mr. Zabarsky stated, in that they are not here seeking site plan approval as Verizon Wireless feels strongly that site plan approval is not required for these types of installations since they don't involved a lot and are located in public rights-of-way.

Mr. Zabarsky stated he looked at the Federal Communications Act under 47 U.S. Code, section 253, and cited from same.

Several members weighed in as to what control the Planning Board and the Council has at this point in time.

Mr. Robert McGuckin of Tilson Tech, 5 East First Street, Clifton, NJ spoke as to where the proposed 5 sites in town are located as well as what is being proposed at each site. Mr. McGuckin stated the nodes do not bounce off of, rather, they penetrate buildings in order to expand capacity. Mr. Hein suggested they look at other pole options. Mr. McGuckin stated an extensive investigation was performed and this is the best option. Several Board members had additional questions.

Mr. Zabarsky stated if the Board has any additional questions, the Board should give direction to Messrs. Offen and McGuckin by caucusing and deciding what additional information they would like. It was suggested the Board hold another discussion meeting, and Mr. Furze suggested the Board Clerk compile a list of questions and concerns and send it to both Mr. McGuckin and Mr. Offen when they are supplied to her. Mr. Furze suggested the questions be supplied to the Clerk, via email, by end of the business day on Monday, October 23, 2018. Mr. Offen offered if it was possible to have a recommendation after the Board's November meeting in order to be considered at the December Council meeting, he would appreciate that. Mr. Zabarsky stated next month's agenda has a possibility of three applications. Mayor Curtis stated if Board members get all their questions in and on paperwork which can be distributed before the meeting, this piece could be quick. Mr. Offen stated if they could respond to the Board in writing beforehand, they would certainly do so. Mr. Zabarsky and Board members agreed they would like to see one of the nodes in person or do a field trip in order to see a practical application.

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

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

Respectfully submitted,

  
Claire S. Hense