

Bay Head Planning Board
April 4, 2018

The meeting of the Bay Head Planning Board was held on Wednesday, April 4, 2018 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, Christopher Parlow, Patricia Wojcik, Mark Durham, William Curtis, Neil Devesty, Robert Hein, Thomas Charlton, John Henry Morris, Kevin Feehan
Absent: Kirsten Hinds, Rick McGoey

The October 18, 2017 **Minutes** were approved on a motion by Kathleen Tell and seconded by Kevin Feehan, with all in favor save Christopher Parlow who abstained as he was not yet on the Board at the time of the meeting.

Mr. Furze stated the Board had one **Resolution** for review this evening, that of 463 Club Drive, LLC, 463 Club Drive, a/k/a Block 49, Lot 9, which was denied at the meeting of February 21, 2018.

A motion was made by Christopher Parlow and seconded by William Furze to deny the application and to approve the Resolution denying same. Roll call: Yays: Christopher Parlow, William Furze, Kathleen Tell, Thomas Charlton, John Henry Morris.

Mr. Furze stated the first **application** to be heard this evening is Playa Bowls, LLC regarding property located at 68 Bridge Avenue, a/k/a Block 25, Lot 5.01.

William Curtis and Robert Hein recused themselves as they cannot sit for a use variance and Neil Devesty recused himself since he is a member of the Bay Head Fire Company which is located directly across the street from the applicant's property. Mr. Zabarsky stated because this involves a use variance, this Board will sit as a Zoning Board, 7 members will sit and applicant will need 5 affirmative votes and although Mr. Devesty does not need to recuse himself, we have enough Board members for the vote this evening. Mr. Zabarsky stated Mr. Morris does not have to recuse himself even though he rents within 200 feet of the property as there is a case regarding this.

Donna M. Jennings, Esq. from the law firm of Wilentz, Goldman and Spitzer, Woodbridge, NJ came forward. Ms. Jennings stated she is representing the applicant who is seeking to operate a Playa Bowls food service restaurant at the premises which contains the Bay Head Shopper's Village, and applicant desires to be located within one of the buildings on the premises. Ms. Jennings stated this Board previously granted amended site plan approval for the entire Bay Head Shopper's Village memorialized by Resolution dated January 17, 2018.

Ms. Jennings stated that the applicant is now requesting the following relief: minor site plan approval if needed; conditional use variance for ordinance section 147-17 to operate Playa Bowls

in violation of the conditional use standards related to the minimum number of parking spaces, and a minimum setback to the nearest lot line of a single family residential use; a bulk variance under ordinance section 147-13a with respect to the minimum number of parking spaces. Ms. Jennings further stated in support of the application, the Board would hear testimony from expert witnesses and collectively, it is their opinion that their testimony will demonstrate that despite the deviation from the conditional use standards, the site continues to be an appropriate location for this use. Ms. Jennings stated the use itself is permitted but they deviate from the two conditional use standards so the Board's focus this evening should not be upon the actual use, but on the deviations from the conditional use standards.

Ms. Jennings stated that more importantly, this Board granted, on three separate occasions, a temporary use variance to operate Playa Bowls at this location.

The following items were marked into evidence:

- A-1 Development application
- A-2 Memorializing Resolution #2016-02
- A-3 Memorializing Resolution #2016-07
- A-4 Memorializing Resolution #2016-12
- A-5 Survey from Yorkanis & White dated 2/13/15
- A-6 Minor site plan from Terra Nova Design, LLC dated 1/15/18
- A-7 As constructed trash enclosure plan from Yorkanis & White dated 3/21/17
- A-8 Review letter from Susan S. Brasefield, Board engineer, dated 2/15/18
- A-9 Hearing Notice Affidavit
- A-10 Affidavit of Publication with attached hearing notice
- A-11 Hand-out from applicant's attorney showing the interior layout with mark-up of conditional use standards with parking requirements

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

Zachary Morriello, professional engineer licensed in NJ, from Terra Nova Design, LLC, Bay Head, NJ

Gordon Gemma, licensed planner in NJ, 68 Seneca Place, Oceanport, NJ

A motion was made by Kathleen Tell and seconded by Kevin Feehan, to open the meeting to the public for questioning, with all in favor.

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

Keith Goetting, 415 Lake Avenue
Ellen Tobin, 50 Bridge Avenue
Louis Goetting, 415 Lake Avenue
Ann Lee, 462 Lake Avenue

A motion was made by Christopher Parlow and seconded by Patricia Wojcik to close the meeting to public questioning. All in favor.

A motion was made by Kathleen Tell and seconded by Kevin Feehan to open the meeting to the public for commentary. All in favor.

The following person came forward:

Louis Goetting, 415 Lake Avenue

Thereafter the meeting was closed to the public and the Board was polled. Mr. Zabarsky caused to have entered the following into evidence:

B-1 Notice posted in the corridor of the Municipal Building regarding the change of date for the meeting;

B-2 Notice from the Asbury Park Press and the Ocean Star

Recommendations were made as to particular conditions. After the Board took a short break for Ms. Jennings to confer with her client, Ms. Jennings stated her client would like to move forward with the application for twenty-one (21) seats, which is for what they applied, as they have been before the Board several times already and have already been approved for 16 or 17 seats. A motion was made by Kathleen Tell and seconded by Christopher Parlow to approve the application with the recommended conditions of Resolution #2016-12. Yays: Kathleen Tell, Christopher Parlow, William Furze, Patricia Wojcik, John Henry Morris. Nays: Mark Durham, Thomas Charlton.

Mr. Furze stated the second **application** to be heard this evening is that of Mark and Michelle Bingham, regarding property located at 71 Osborne Avenue, a/k/a Block 24, Lot 22.

John J. Jackson, III, Esq. from the law firm of King, Kitrick, Jackson & McWeeney, 2329 Highway 34, Manasquan, came forward. Mr. Jackson stated he represents the applicants who desire to elevate, re-design and do substantial improvements to the house which they believe will be aesthetic and safety upgrades. Mr. Jackson said most importantly they are adding a master bedroom so they can use this as their summer home.

Mr. Jackson handed out colored renderings (later marked into evidence as A-7) and stated they are the plans the Board already has but their expert, Mr. Nemergut, colorized them in order to get a sense of what the house will look like. Mr. Jackson stated the proposal is to use natural cedar shingles, elevate the front porch with a garage underneath, the side of the structure, the rear yard with a substantial aesthetic upgrade, and a side yard that faces east. Mr. Jackson stated that to give some perspective, what is shown in the middle is the portion of the house that is on the current, existing sideline so all of their improvements are built within the setbacks and the only portion that will remain is the existing side yard setback and that is for which they are seeking a variance. Mr. Jackson stated what they are seeking to do is elevate the existing structure, and all of the variances are driven by the structure lawfully on the premises. He further stated the garage in the back is non-conforming, is too close to the property line and applicants seek to

eliminate the garage to bring the property into greater conformity, eliminate that non-conformity which will bring down their building coverage to very close to conforming, except for the steps. Mr. Jackson stated they are over on the building coverage by .9% and as proposed, they can re-work the rear deck if the Board desires to make them conform on building coverage. Mr. Jackson further stated they shifted the house back "a little bit" to make the conformance greater, as requested by one of the neighbors, and that is an alternative.

The following items were marked into evidence:

- A-1 Development application
- A-2 Survey from Vallee Surveying, Inc. dated 9/18/17
- A-3 Architectural plans from N2 Architecture revised 2/21/18
- A-4 Review letter from Susan S. Brasefield, Board Engineer, dated 3/14/18
- A-5 Affidavit of Publication
- A-6 Hearing Notice Affidavit with attached Hearing Notice
- A-7 Power point presentation packet with 9 colored photographs, 4 architectural drawings, and review letter of Susan S. Brasefield, Board Engineer, previously marked into evidence as A4.

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

Marc Nemergut, licensed architect in New Jersey, of N2 Architecture, 304 Main Street, Avon-by-the-Sea, NJ

Mark Leonard Bingham, 71 Osborne Avenue

A motion was made by Christopher Parlow and seconded by William Curtis, to open the meeting to the public for questioning, with all in favor.

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

Jan L. Wouters, Esq., member of the firm of Bathgate, Wegener & Wolf, P.C., 1 Airport Road, Lakewood, NJ who represents the Wilsons, owners of 67 Osborne Avenue

Steve Cannon, 75 Osborne Avenue

Fran Wilson, 67 Osborne Avenue

The meeting was closed to the public for questioning. Mr. Furze opened the meeting to the public for commentary. The following people came forward:

George Schweickert, 70 Osborne Avenue

Steven Cannon, 75 Osborne Avenue

Lisa Falcone, 94 Osborne Avenue

A motion was made by Robert Hein and seconded by Christopher Parlow to close the meeting to the public for commentary. All in favor.

Summations were given by both Jan L. Wouters, Esq. and John J. Jackson, III, Esq.. Members of the Board were polled and a motion was made by Robert Hein and seconded by Kevin Feehan to approve the application with additional modifications agreed upon by the applicants. Yays: Robert Hein, Kevin Feehan, Christopher Parlow, Patricia Wojcik, Mark Durham, William Curtis, Thomas Charlton, John Henry Morris Nays: William Furze.

Mr. Furze stated the third **application** to be heard this evening is that of Kenneth and Suzanne Craig, regarding their property located at 41 Harris Street, a/k/a Block 29, Lot 17.

Mr. Furze indicated that although it was very late, after 11:30 p.m., he had a brief discussion with the third applicant and he would like to afford him the luxury of at least coming forward and making a brief statement about his project. Mr. Zabarsky asked if the Board was going to start the application, and Mr. Furze stated no.

Kenneth Craig, 46 Harris Street, came forward. Mr. Craig stated several months ago, he and his wife, Suzanne, decided to lift the house in order to address stability issues with the foundation which is original to the house from the late 1800's/early 1900's, and to bring it into compliance with the new base flood elevations. Mr. Craig stated due to the new height of the house, the front steps leading to the main entrance will extend further into the setback, and as the side porch will be elevated, they are requesting a coverage variance to allow for the construction of a deck running along the west side of the house. Mr. Craig stated this will allow them to continue to use the side yard in the same way they did prior, and will also give access to the utilities. He further stated based upon the Board Engineer's review letter, they will be happy to submit a revised plot plan to make calculations clear, or any other documents to clear up any ambiguities.

A motion was made by William Curtis and seconded by Robert Hein to carry the application to the next regular meeting date, namely, April 1, 2018 with no re-notice required. All were in favor.

Old Business

The Board reviewed Ordinance #2018-03 entitled "Ordinance of the Borough of Bay Head, County of Ocean, State of New Jersey, Amending Chapter 126 of the Municipal Code of the Borough of Bay Head, entitled "Flood Damage Prevention".

Mr. Parlow stated the Council introduced this Ordinance which is a required ordinance associated with the flood maps. Mr. Parlow further stated that Point Pleasant Beach agreed to accept the data in the preliminary maps, they are the only municipality in Ocean County to agree to this, and this affects Bay Head because we are on the same flood map panel along with Point Pleasant Borough and Point Pleasant Beach. Mr. Parlow explained that when Point Pleasant accepted the preliminary maps, FEMA stated they are going to change the maps – change Point Pleasant Beach only – but they are going to have to introduce and adopt a new panel, and therefore Point Pleasant Borough and Bay Head have to adopt this Ordinance to accept the new panel. Mr. Parlow further stated our data is not changing on that panel, it is still going to be the 2006 data currently on the flood maps and we are still going to have to abide by the preliminary

map issued in March, 2014. Mr. Parlow stated this is a required ordinance by the DEP and FEMA but because it is also a Land Use Ordinance, it had to be forwarded to the Planning Board to give the Board an opportunity to review and comment, if they so desire. Therefore, it was introduced by the governing body and the Planning Board has 35 days within which to render an opinion on it, if the Board has one, and then the Council can act on the final adoption of the Ordinance.

A motion was made by Neil Devesty and seconded by Christopher Parlow to recommend to the governing body that they approve proposed Ordinance #2018-03. All were in favor. The Clerk will send an e-mail to the Municipal Clerk advising of this.

Mr. Furze opened the meeting to **public discussion**. There was none.

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

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

Respectfully submitted,



Claire S. Hense