

**Bay Head Planning Board
January 17, 2018**

The meeting of the Bay Head Planning Board was held on Wednesday, January 17, 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, Mark Durham, William Curtis, Neil Devesty, Robert Hein, Thomas Charlton, Kirsten Hinds, John Henry Morris, Kevin Feehan, Richard McGoey. Absent: Patricia Wojcik

Mr. Furze noted there were two changes/revisions to the agenda this evening, one being that the Minutes from the September 20, 2017 meeting were not yet available for review.

The Clerk stated there was an application for a use variance filed by BHC Condominium Association regarding property at 106 Bridge Avenue. She stated notices were sent out but the attorney pulled the application and stated he will re-notice in another month or two. Mr. Zabarsky stated normally there would be a motion to amend the agenda to include the BHC application since it was noticed for this evening so the record will formally reflect that the agenda includes it and there should be a motion to accept the withdrawal of the application in case any of the public are in attendance at the meeting.

Thereafter, a motion was made by Kathleen Tell to amend the agenda as described and was seconded by Robert Hein. All were in favor, none opposed.

Kathleen Tell made a motion to strike the application of BHC Condominium Association from the agenda, as requested by their attorney, which was seconded by Robert Hein. All were in favor, none opposed.

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

CLASS II -- Christopher F. Parlow

CLASS III -- Robert F. Hein

**CLASS IV -- Kathleen Tell
Thomas S. Charlton**

Alternate #2 -- John Henry Morris

Alternate #4 --Richard McGoey

The following members were elected as officers:

A motion was made by William Curtis and seconded by Robert Hein to elect **William Furze as Chairman**. All were in favor, none opposed.

A motion was made by Neil Devesty and seconded by William Furze to elect **Kathleen Tell as Vice-Chairperson**. All were in favor, none opposed.

A motion was made by William Curtis and seconded by Robert Hein to elect **John Henry Morris as Secretary**. All were in favor, none opposed.

A motion was made by William Curtis and seconded by Robert Hein to elect **Patricia Wojcik as Assistant Secretary**. All were in favor, none opposed.

A motion was made by William Curtis and seconded by Christopher Parlow 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, none opposed.

A motion was made by Kathleen Tell and seconded by John Henry Morris to designate meeting dates and time as Wednesday, February 21, 2018 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 first Wednesday of the month, namely, November 7, 2018; and to designate the Ocean Star and Asbury Park Press as the official newspapers. All in favor, none opposed.

Mr. Furze stated the Board had one **Resolution** for review this evening, that of Atlantic Pier Co., Inc., 62 Bridge Avenue, a/k/a Block 25, Lot 5.01 which was approved at the meeting of December 20, 2017. Mrs. Tell suggested adding Mr. Pandozzi's testimony, letter D of the 3rd page, and mentioned he also testified the applicant needed the rental income which would be generated by the two family home to offset the additional expense it was incurring in order to preserve the two buildings on Bridge Avenue that were so important to so many people. Mrs. Tell stated she thought it was a significant piece of testimony and would like to see that included in the Resolution.

Mr. Durham observed with regard to the Resolutions, there is a space for "those opposed" and "those abstaining", and suggested we could put "None", if applicable.

Mr. Zabarsky stated one other thing he wanted to point out was Mr. Kennedy testified that his understanding of the Residential Site Improvement Standards (RSIS) was that the applicant was obligated to provide for 3 parking spaces, and a number of times he referred to the multi-family dwelling unit as an apartment. Mr. Zabarsky stated there was some repartee among Mr. Furze, Mrs. Tell and himself with regard to the issue of parking, and that he had copies of the RSIS which the Board can do under New Business. Mr. Zabarsky stated he printed out the parking part of the RSIS, which supersedes municipalities and upon which he conferred with Ms. Jennings, and under the RSIS this would be considered what is called a 2 family duplex, and for a 2 family duplex, "single family detached values shall apply as if single family house for each

unit". Mr. Zabarsky stated therefore, in order to get 1.5 parking spaces per unit for a total of 3 parking spaces, they are limited to two bedrooms for each unit so if the Board would note in a condition of the Resolution under number 11, that is from where he got that to put in there that in fact, based upon the RSIS, this is a two family dwelling which can only have two bedrooms in each unit for 3 parking spaces. Mr. Zabarsky further observed that if you went to three bedrooms, for example, that requires two parking spaces and then they would be out of compliance. Mr. Zabarsky stated he sent that to Ms. Jennings in advance, and she agreed with his analysis and approved this condition of the Resolution. Mr. Zabarsky stated this was not originally discussed as a condition but it was a representation, and he felt that based upon the fact we are talking about residences, there were a lot of interested people here, and we were talking about bedrooms, that we should say what it is, e.g., you can only have 2 bedrooms.

Mr. Furze stated the unfortunate part of this is that in Chapter 147 of our Land Use, there is a parking schedule and if the NJ Administration Code trumps that, there is no reason to have it because then it would be in conflict in many cases. Mr. Furze further stated he always found it interesting that you could have any size home in the Borough of Bay Head and only be required to have 2 parking spots. He further opined he believes "we have gotten away with that because the homes which are larger usually come with a larger parcel of land" and they can easily accommodate the cars but that may not always be the case in the future. A further discussion ensued as to the amount of parking spots required for single family and multi-family homes.

A motion was made by Kathleen Tell and seconded by Neil Devesty to approve the Resolution as amended. Roll call: YEAS: Kathleen Tell, Neil Devesty, William Furze, Mark Durham, Thomas Charlton, John Henry Morris.

Mr. Furze stated the first **application** to be heard this evening is that of Judy Davis for 463 Club Drive, LLC, 463 Club Drive, a/k/a Block 49, Lot 9.

Judy Davis, 509 West Lake Avenue, Bay Head, came forward and was sworn in by Mr. Zabarsky.

The following items were marked into evidence:

- A-1 Development application
- A-2 Memorializing Resolution #2016-04
- A-3 Architectural plans from Archimuse dated 10/13/17
- A-4 Review letter from Susan S. Brasefield, Board Engineer, dated 1/11/18
- A-5 Hearing Notice
- A-6 Affidavit of Publication

Mr. Zabarsky noted previously there was a Resolution of approval for renovations, and a variance was granted for a setback of 5.5 feet where 6 feet was required, and 11.07 feet where 16 feet was required, which was basically to raise the residential structure and convert the existing garage into habitable space. Mr. Zabarsky further stated applicant is here because she would like to make some changes to the actual renovation, and asked Ms. Davis to tell the Board what changes she would like to make which are different from those which were approved.

Ms. Davis stated the original design had the addition in the front of the house, which is on the west side, at an angle. Ms. Davis stated the Board approved changes to the property at 463 Club Drive several years ago and in the process of executing those changes, she discovered she did not care for the design. Ms. Davis stated she, the architect and the builder “bantered back and forth” and came up with another design. Ms. Davis further stated she realizes now she should have come back to the Board before now, but was under the assumption she was not in need of any additional variances because she was just increasing the existing footprint by going up, not out. Ms. Davis stated the reason she is before the Board is because they changed the one bedroom and bath to 2 bedrooms and bath to extend the addition across the front instead of just on the one side of the house and further, while she was “at it”, she added a bathroom section on the back deck of the house.

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

Benjamin Kracauer, licensed architect in the State of NJ, of Archimuse, 139 Fulton Street, New York, NY

Mr. Furze suggested applicant and her architect go back to the drawing board and show the Board definitively, with dark lines, the differences in all elevations so that the Board can better understand the application. Ms. Tell observed there are several new Board members who were not at the first application and therefore she did not believe the Board could make a fair evaluation without seeing the visuals from the previous and the current. Mr. Furze added that our Land Use has specific regulations with regard to enlarging or expanding non-conforming buildings. Mr. Kracauer confirmed construction has ceased as it has been built beyond what was approved. Mr. Furze stated he would like to see drawings of what has been built, what was originally approved, and what is proposed. Mr. Parlow stated he would like to see reasons as to why the Board should approve the bulk variance and what the hardship is here.

Mr. Furze opened the meeting to the public for comments in case anyone cannot make it to the meeting in February. The following person was sworn in by Mr. Zabarsky and gave his testimony:

Frederick Chesterman, 106 Grove Street.

A motion was made by Christopher Parlow and seconded by Mark Durham to carry this application to the Board’s next meeting, namely, February 21, 2018, without further notice. All in favor.

Mr. Furze stated therefore the next **application** to be heard this evening is that of Bryan and Florence McFadden, 132 Bridge Avenue, a/k/a Block 16.01, Lots 5 & 5.

Kathleen Tell recused herself as she is a neighbor and lives within 200 feet of applicants.

Roberta Anne Burcz, Esq., 1229 Bay Avenue, Point Pleasant, NJ came forward. Ms. Burcz stated she represents the applicants who are here for a bulk variance and subdivision.

The following items were marked into evidence:

- A-1 Development application
- A-2 Letter from Roberta A. Burcz, Esq., with attachments, dated 12/21/17
- A-3 Six (6) pages of black and white photographs marked "2015"
- A-4 Six (6) pages black and white photographs marked "2017"
- A-5 Resolution #2015-08
- A-6 Survey from FWH Associates dated 6/10/16
- A-7 Minor subdivision from FWH Associates dated 6/23/15
- A-8 Plans from Aquatecture Associates dated 6/8/15
- A-9 Review letter from Susan S. Brasefield, Board Engineer, dated 1/10/18
- A-10 Affidavit of Service
- A-11 Affidavit of Publication with Hearing Notice

Ms. Burcz stated the applicants came before the Board in 2015 for a bulk variance and minor subdivision. Ms. Burcz stated the house required work due to Sandy, for which they proposed renovations to preserve the house, lifting and getting rid of the two family use; there is a structure in the rear, a garage, which had a living area used by extended family members. Ms. Burcz stated they were also getting rid of a non-conforming front yard setback.

Ms. Burcz stated a map was not filed with the County in a timely fashion and therefore the McFaddens are back to make another application and the difference today is the house has already been lifted, has already been moved, and the non-conformities have already been removed. Ms. Burcz further stated the reason they need a variance is because when the house was moved, her clients made the porches smaller, the house was made smaller, but since it was already a large house, they needed a side yard variance. Ms. Burcz further stated the resultant lots were always designated as two separate lots on the Bay Head Tax Maps, are fully conforming as to lot frontage, width, depth and area. Ms. Burcz stated that after the application was approved in 2015, Mr. McFadden came back before the Board because apparently there had been a mistake on the application as far as the rear yard setback which resulted in the garage being allowed to stay where it is. Ms. Burcz stated they plan to file the map in a timely manner if they receive approval this evening.

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

Bryan McFadden, 134 Bridge Avenue

Christopher Rosati, P.E., P.P., from FWH Associates, P.A., 1856 Route 9, Toms River, NJ, who caused to have entered the following into evidence:

- A-12 Colored rendering of minor subdivision from 2015
- A-13 Colored rendering of as-built survey dated 6/10/16

The meeting was opened to the public for comment. The following people were sworn in by Mr. Zabarsky and gave their testimony:

Jacqueline Keer, 138 Grove Street

Kathleen Tell, 137 Bridge Avenue

A motion was made by Robert Hein and seconded by Neil Devesty to approve the application on the condition that the garage is to be relocated at least four (4') feet from the northernmost property line. Yays: Robert Hein, Neil Devesty, Christopher Parlow, Mark Durham, William Curtis, Thomas Charlton, Kirsten Hinds, John Henry Morris. Nays: William Furze.

Old Business

Mr. Hein stated we need to have the Verizon experts back as he had questions regarding the proposed plans. He further indicated there had been no discussions among Council members about this matter and that when he attended the NJ League of Municipalities, he discovered there are many towns in New Jersey in disagreement and he would like to address the locations Verizon is recommending. Mayor Curtis suggested the possibility of the Board and Council jointly hiring special counsel for an advisory opinion and he will meet with three experts to discuss this. Mr. Hein stated he will tell the Council we need to obtain counsel regarding this matter. Ms. Tell had questions regarding the boxes at Bridge and Mount which are owned by the State and are in their right-of-way.

New Business

Mr. Furze stated a question was raised at last month's meeting as to what is an appropriate reason for Board members to recuse themselves from an application, and pointed Board members to Land Use Chapter 147.31, "Conflict of interest". Mr. Furze stated it is all in there, that we have had this discussion before, and he was going to paraphrase but he believes that the discussion was if a Board member feels they still can govern in an unbiased fashion, then they need not recuse themselves. Mr. Zabarsky stated a member definitely has to recuse themselves if they are within 200 feet of a property for which there is an application before the Board, but there is a difference between an actual conflict and an appearance of impropriety. Mr. Zabarsky consulted Cox's Zoning & Lane Use book and cited the 4 types of common law conflicts. He further stated the rule is if you are disqualified as a member, you are supposed to leave the room and not participate at all.

Mr. Furze also stated at the end of last year, he asked that we resolve to put the wall monitor to good use and for the first application this evening, it would have been useful. Mr. Zabarsky stated the only thing that could be put onto the monitor is something the Board has as an exhibit; you'd have to scan it, have a hard copy of it. Mr. Furze stated he asked if we could get the IT person in here to hook things up for presentation, have the cables ready. Mayor Curtis stated it does work and they have had it at the Council meetings. Mr. Hein stated you need a very long HDMI cable as it is hard-wired. Mr. Charlton said they had problems with the wireless but the wireless will work, it just needs to be tested. Mr. Furze stated he would speak with his IT guy at work.

Mr. Zabarsky handed out the RSIS for the parking requirements to all Board members, and stated he thinks the suggestion is going to be that the Mayor should speak with the Borough attorney, Jean Cipriani, Esq., and maybe we should be amending our ordinance on parking for residential areas to comply with the RSIS standards. Mr. Zabarsky stated the Clerk would scan and e-mail a copy to everyone.

Mr. Furze asked Mr. Zabarsky if he wanted to speak to the Board regarding the law suit with the Waters vs. Borough of Bay Head Planning Board and Rantz vs. the Borough of Bay Head Planning Board, and Mr. Zabarsky stated they are scheduled for a trial on the 5th, which is just for oral arguments on the briefs submitted. He confirmed with the Clerk that Board members were sent a copy of his brief and stated if anyone wanted a copy of Mr. Liston's brief, he would provide same to them. Mr. Zabarsky stated it was his understanding the Waters' received a permit to convert the indoor shower to an outdoor shower. The Clerk stated the Waters' submitted for a permit to block off the shower from inside the garage, and therefore just have access from the outside, making it strictly an outside shower. Mr. Zabarsky stated the Waters' were going to cross appeal and ask for the shower, and he believes they realized there is no evidence there and therefore they didn't cross appeal that and are basically siding with the Board; they want the approval they received for the sink and toilet and that's it.

Mr. Furze stated he was not going to open the meeting to the public for discussion as there were no members of the public in attendance.

Mr. Zabarsky stated he is scheduled for surgery at the end of January and therefore Robert Greitz, Esq. will be at the February 21, 2018 meeting in his stead, but he would have the Resolutions from tonight's meeting to the Clerk ahead of time.

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

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

Respectfully submitted,


Claire S. Hense