

Bay Head Planning Board
October 17, 2018

The meeting of the Bay Head Planning Board was held on Wednesday, October 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, John Henry Morris, Christopher Parlow, William Curtis, Mark Durham, Neil Devesty, Thomas Charlton, Kirsten Hinds, Kevin Feehan, Rick McGoey

Absent: Patricia Wojcik, Robert Hein

The September 19, 2018 **Minutes** were approved on a motion by Kathleen Tell and seconded by Neil Devesty, with all in favor, with the exception of Christopher Parlow who abstained as he was not a Board member at the time.

Mr. Furze stated there was one **Appeal alleging Zoning Officer error** to be heard this evening, that of Peter and Robin Naylor, 417 Lake Avenue, a/k/a Block 30, Lot 4.

F. Bradford Batcha, Esq., of Batcha & Batcha, LLC, 115 Maple Avenue, Red Bank, NJ, attorney for the applicants, came forth.

Mr. Batcha stated applicants have applied to the Board to appeal the decision of the Zoning Officer to deny their zoning application to permit the construction of a swimming pool in their rear yard, and in the alternative, should the Board not agree, applicants are applying for a use variance to install said swimming pool on a lot which presently contains a pre-existing, non-conforming use, that being a single family residential dwelling and a detached garage with an apartment therein. Mr. Batcha stated they do not believe a swimming pool is considered an expansion of use.

The following items were marked into evidence:

- A-1 Development Application
- A-2 Memorializing Resolution #2013-04 dated 7/15/13
- A-3 Letter from F. Bradford Batcha, Esq. dated 10/3/18 with attached revised page 2 for Development Application, zoning denial, and letter from Borough attorney dated 11/9/17
- A-4 Pool plot plan from R.C. Burdick, P.E. dated 9/26/17
- A-5 Final as-built survey from Lindstrom, Diessner & Carr, P.C. dated 3/4/15
- A-6 Review letter from Susan S. Brasefield, Board Engineer, dated 8/30/18
- A-7 Hearing Notice and Affidavit of Mailing
- A-8 Affidavit of Publication

Mayor Curtis recused himself as this may go to a use variance. After it was deemed the Zoning Officer's file was needed, recording was stopped in order for the Clerk to retrieve the file from the office. Recording resumed, with the Clerk presenting the letter from Gilmore & Monahan dated November 9, 2017 along with a graphic scale which was attached to page 2 of a letter from the Board Engineer dated August 2, 2018. Mr. Zabarsky noted that the subsequent review letter dated August 30, 2018 from the Board Engineer had the same content as her 8/2/18 letter. There was also a copy of a final, as-built survey from Lindstrom, Diessner & Carr dated March 4, 2015, and a one-page colored rendering of the proposed pool, all of which were then marked into evidence by Mr. Zabarsky as A-9:

A-9 Sections of Zoning Officer Ted Bianchi's file

Mr. Zabarsky stated that according to the Bay Head General Code regarding Land Use, specifically 147-6C, it states that in no instance shall there be more than one residential building on each lot of record. Mr. Batcha stated they were "simply adding a pool" which did not increase the size of either building, namely the main residence nor the accessory structure. He further stated it was de minimus in nature and did not increase the non-allowable use.

Mr. Zabarsky gave instructions to the Board and stated it was not a permitted use as according to the Borough's Ordinance, the pool is a structure and there is no difference between habitable and an 8x20 swimming pool with 1 foot of coping. Mr. Zabarsky further stated that in 147-15(A)3 it states "no nonconforming use may be expanded" and section 147-2 in Land Use defines a swimming pool as a structure. Mr. Batcha stated it is his position they are not increasing or expanding the non-conformity.

After the Board was polled, a motion was made by Christopher Parlow and seconded by Thomas Charlton to deny the applicants' appeal regarding a Zoning Officer Error, thereby upholding the Zoning Officer's decision. Yays: Christopher Parlow, Thomas Charlton, William Furze, Kathleen Tell, Mark Durham, Neil Devesty, Kirsten Hinds, Rick McGoey. Nays: John Henry Morris.

Thereafter, Mr. Batcha stated the applicants wished to proceed with their **application**. Mr. Batcha thanked the Board for listening to the appeal, and stated his clients are asking for a use variance to install a swimming pool between the house and the accessory structure.

Mr. Zabarsky swore in the following witness, who gave her testimony:

Robin Naylor, 417 Lake Avenue

Mr. Batcha stated applicants are proposing to put a Deed restriction on the property to never allow condominiums to be built there, as well as a restriction to never rent out to third parties either the primary house or accessory structure, for a fee.

Mr. Zabarsky swore in the following witnesses, who gave their testimony:

Allison Coffin, licensed professional planner, 823 West Park Avenue, Ocean Township, NJ

Robert C. Burdick, professional engineer and professional planner, 1032 Ocean Road, Point Pleasant, NJ

Mr. Furze opened the meeting to public to ask questions of the witnesses; no one came forth.

Mr. Furze opened the meeting for public comments. The following person was sworn in by Mr. Zabarsky and gave his testimony:

Keith J. Goetting, 415 Lake Avenue, Bay Head

The Board was polled and thereafter a motion was made by Kathleen Tell and seconded by Neil Devesty to approve this application, with the aforementioned Deed restriction conditions, along with the condition that the pool equipment will be located in the garage. Yays: Kathleen Tell, Neil Devesty, William Furze, Christopher Parlow, Mark Durham, Thomas Charlton, Kirsten Hinds

Old Business

Mr. Zabarsky stated he received an Affidavit from William Gage, Esq. stating there was an error in Memorializing Resolution #2017-05 for Frank Ronan regarding his property at 425 East Avenue, a/k/a Block 40, Lot 9. The applicant requested a variance for a combined side yard setback of 7.6 feet instead of the 15.6 feet reflected in the Resolution. A motion was made by John Henry Morris and seconded by Neil Devesty to adopt the change to the original Resolution. Yays: John Henry Morris, Neil Devesty, Mark Durham, William Curtis, Thomas Charlton, Kirsten Hinds

New Business

Mr. Zabarsky mentioned he would like the Board to read Cox 26-1, et seq. which discusses the appeal of an alleged Zoning Officer error, in order to be prepared for an item on next month's agenda and to be aware of the constraints contained therein. He called their attention to ask themselves if based upon the Ordinance, did the Zoning Officer make the correct call. Mr. Zabarsky requested the Board Clerk to make copies of the Zoning Officer's file for Board members and pointed out that if the Zoning Officer denied a request, he would state his reasons for same and if he approved a request, he would be relying upon the information provided to him along with the application, and not necessarily give the reasons as to why it was granted.

Also under New Business, Mr. Furze mentioned he lamented the loss of another historic building, as well as the fact the Borough has no tree ordinance. He mentioned that a former Board member, Dr. Hyer, bequeathed him correspondence regarding historic preservation and he would like to re-investigate same.

Mr. Furze stated with regard to trees, we recently granted a subdivision on Osborne Avenue for property which contained beautiful mature trees, and the first thing done was they "chopped" them down. Mr. Furze stated he is not promoting a tree ordinance, per se, but maybe Board

members can ask applicants to show mature trees on the property. Mrs. Tell stated it can happen without an ordinance. Mr. Zabarsky mentioned Toms River has a substantial ordinance whereby you need a permit to take down a tree. Ms. Brasfield mentioned that Howell has one also. Mr. Parlow wanted to know if the Planning Board application is able to be modified to incorporate a plot plan that includes trees, and Mr. Zabarsky stated it has to be in the ordinance and he will check our ordinance to see if we can do it by Resolution, or if it has to be done by Council as an ordinance. After checking, Mr. Zabarsky stated the Board does not create the ordinance; the Board can make recommendation to Council that we can make an amendment. Mr. Durham stated we should be sensitive to the sustainability of the tree. Mayor Curtis stated this is worthy of pursuing, further stating he would like to see the preservation of older homes in order to retain the history and that the Board should think of a way to come up with a way to delay the demolition of these homes.

Again under New Business, Mayor Curtis stated our ordinance has specific setbacks for the East Avenue oceanfront property homes, and that the setback begins from the center of the rock revetment twenty feet westward to the westward toe of the dune, plus another twenty feet westward, before a structure can be built. Mayor Curtis further stated if a survey comes in that states "approximate center", he has advised the Zoning Officer to deny the zoning permit as we need to get an exact location. Mayor Curtis stated we have one home clearly built into the dune and the homeowner has been instructed he must find the exact measurement.


It was suggested we need to measure from the curb to the front and that the ordinance be changed. Mr. Furze opined that a homeowner should not be allowed to transfer property until there is a dune walkover in place. Mr. Parlow stated the center of the revetment might be different to each end of the property, and Mr. Furze stated we need to find the center along the whole length.

Public Discussion

Heather Robertson, 161 Bridge Avenue, questioned Mr. Zabarsky regarding the timeline for an appeal alleging a Zoning Office error; Mr. Zabarsky stated it is twenty (20) days from the date of denial or allowing of a permit.

A motion was made by Kathleen Tell and seconded by William Curtis to approve the **vouchers**. All were in favor.

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

Respectfully submitted,

Claire S. Hense