

**Bay Head Planning Board**  
**July 17, 2019**

The meeting of the Bay Head Planning Board was held on Wednesday, July 17, 2019 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, Christopher Parlow, Patricia Wojcik, William Curtis, Neil Devesty, Dennis Shaning, Thomas Charlton, Jacqueline Keer, John Henry Morris, Kevin Feehan, Rick McGoey

Absent: Kathleen Tell

Mr. Furze stated there was one **application** to be heard this evening, that of Laurence & Patricia Shadek, 243 East Avenue, a/k/a Block 37, Lot 1.

**William T. Gage, Esq.**, 536 Lake Avenue, came forward and stated he represents the applicants.

Mr. Gage stated currently the lot is vacant, the house that was there was, he believes, the only house that was destroyed the night of Superstorm Sandy. Mr. Gage stated the applicants propose to construct a new home on the property and one of the items they are requesting as part of this development is to put a 6 foot high fence on the southerly property line. Mr. Gage further stated what we see is North Street ends in a "T" right at East Avenue but in fact, the street goes further east towards the beach and so the Zoning Officer determined that was considered to be a paper street even though it is unimproved, and therefore that requires a setback of ten feet from that property line in which to put a 6 foot high fence. Mr. Gage stated anything within the front yard setback allows only a 3 foot high fence.

Mr. Gage stated in his personal view although the unimproved portion of North Street may meet the technical definition of a street, effectively it does not as it has never been improved, it is not improved now, he can't see under any circumstances whatsoever where it could possibly be improved. He stated this is especially given the most recent developments whereby the State has mandated any type of access area in that section and therefore the ability for the town, even if they wanted to pave it over, he believes at this point is now gone. Mr. Gage stated that in this particular case, he does not believe the Borough's policy of prohibiting a six foot high fence inside a front yard setback applies. Mr. Gage further stated the Zoning Officer believed it was a street and therefore denied their application for a permit and while he does not feel it is good practice to appeal a Zoning Officer's denial because if the Board agrees with him that the Zoning Officer was in error, the Board would probably grant the variance; conversely, if the Board disagrees with him and believes the Zoning Officer was not in error, he would have just spent an hour denigrating the Zoning Officer before the Board and how did he just helped his variance application.

Board member Dennis Shaning recused himself as Mr. Gage is currently representing him on another matter.

Mr. Furze stated he also questioned whether or not North Street was a paper street. He further stated he looked at both sides and wasn't sure if it was a corner lot or not and said the Zoning Officer seems to think it's a corner lot, and Mr. Gage is stating it's a corner lot and the Board Engineer says it's a corner lot. Mr. Gage stated he concurred with Mr. Furze and he is not absolutely sure it is a corner lot, but thinks it is debatable as to whether or not it meets if not the letter of the Ordinance as far as corner lots, certainly the spirit of the Ordinance.

Mr. Zabarsky stated unfortunately he doesn't know that it's crystal clear. He went on to read the Ordinance and read from the Municipal Land Use Law and asked "when is a street a street, and when is a street not a street?". Mr. Furze stated it is not open to public vehicular traffic and the applicants did not notice the public to appeal the Zoning Officer's decision. Mr. Gage stated he did not notice the public for interpretation of the zoning ordinance or for an appeal of the Zoning Officer's denial, and that if the Board were to say right now it is not an improved street, he asked Mr. Zabarsky if the Board had jurisdiction to do so. Mr. Zabarsky stated probably not which is why we should have our Zoning Officer at meetings – some Boards do and some Boards don't. Mr. Zabarsky stated it appears as though the Zoning Officer's interpretation was it is a street for purposes of interpreting the application of our Zoning Ordinance. Mr. Zabarsky stated Mr. Gage is correct in that he did not appeal the decision of the Zoning Officer and he does have a time limitation on that; after checking with the Clerk who stated it was May 28, and Mr. Zabarsky observing the application was filed on July 1, he advised Mr. Gage it is supposed to be twenty days.

Mr. Gage stated there is also a practical aspect he would need to discuss with his clients which is that if indeed the Board determines this is not a street that goes through to North Street east, then this property is an internal property and there is no longer a front yard on North Street, it's a side yard. Mr. Zabarsky stated if it is a street, the pool is not conforming. Mr. Zabarsky stated the definition under 35 really applies if they are not abutting the street and since they are abutting East Avenue, they are abutting the street. Mr. Zabarsky further stated as in #4 State Municipal Land Use should control but the Ordinance is open to interpretation. Mr. Gage stated he would tend to err on the side of caution and believe it is a street and therefore apply for variance relief for the fence and the Board could make a determination on their own with a recommendation to the governing body or to the Zoning Officer that heretofore it is about to be considered an approved street, for zoning purposes, if it is not approved. Mr. Gage further stated that in this particular case, if they were to say it is not considered a street, he would have to go back, file a brand new application, and maybe in a few months they would be back in front of the Board.

Mr. Zabarsky then stated our Zoning Officer made a decision and his decision is not before the Board in terms of interpretation of an appeal. Mr. Furze stated if they would like to proceed, he is ok with that. Mr. Gage asked for a moment to speak with his client, and then returned and stated they are prepared to go forward as though this is indeed a corner lot, and therefore are requesting variance relief for the fence. He would rather err on the side of caution and say the Zoning Officer is correct in his interpretation and if the Board determines at a later time that that

is incorrect, then they have the avenues to discuss it with their officials in the Zoning Department.

Mr. Zabarsky stated if it is not platted, there is no issue but it is platted. Mr. Gage agreed it is platted, it's just covered with sand, and the grey area is whether or not it can't be driven upon or improved. Mr. Zabarsky then stated if the Board says it is a street, the pool must comply and be twenty feet back. Mr. Gage took another break to speak with his client and when he returned, he stated after speaking with Mr. Shadek, they believe the wisest route would be to determine it is not a street under the interpretation of the Zoning Ordinance and they believe the fence should be permitted as a matter of right. Mr. Gage indicated his client would like to say a few words but he thought as long as the Board is in agreement on this, that given all of the facts of the situation it is not a street, then it is a street. Ms. Wojcik stated it is a street, and Mr. Zabarsky stated the Board agrees it is a street. Mr. Gage stated his witness, John Amelchenko, would like to have an opportunity to speak.

Mr. Zabarsky stated the State Municipal Land Use Law says they don't require notice but our Ordinance says we have to give notice and applicant would have to file for an interpretation and provide notice to the public that he is seeking an interpretation if he agrees it is a street. Mr. Gage stated that if they agree with the Zoning Officer that it is in fact a street, all they would need to do is rescind their application; Mr. Zabarsky stated if it is a street, applicant needs a variance for the fence and also for the pool which is on the plan. Mr. Parlow asked if the Zoning Officer should be here, and Mr. Zabarsky stated if applicant is thinking of applying for an interpretation, he believes the Zoning Officer should be here. If applicant is going to appeal the Zoning Officer's decision, the Zoning Officer should be here which is why you notice – to have the Zoning Officer turn over his file. Mr. Parlow stated the Zoning Officer should be there to give his opinion as to why he considers it a street or whatever interpretation for which applicant is asking.

Mr. Gage stated if they believe it is not a street, they would have to have the Zoning Officer here and also notice the public for interpretation of the Zoning Officer's denial. Mr. Zabarsky stated absolutely, because right now it is a street according to the Zoning Officer and applicant is here for a variance for the fence. Nothing has changed. Mr. Gage indicated Mr. Amelchenko wanted to have a word first. Mr. Amelchenko said he wanted to give the Board some background as to the process they have gone through to get where they are right now. Mr. Zabarsky stated we are either having an application or we're not, and no one can start giving testimony but it's not part of the application. Mr. Gage responded that given the confusion right now, the most appropriate thing to do is request an adjournment of this case so that if indeed they would like to request an interpretation of the Zoning Officer's denial, then they would notice the public and get everything in order as far as that goes. Mr. Gage requested an adjournment.

Thereafter, a motion was made by Christopher Parlow and seconded by Neil Devesty to adjourn the application to the August 14, 2019 meeting, with no further notice required unless applicant is changing his application. All were in favor.

There was no **Old Business**

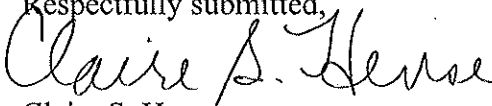
There was no **New Business**

Mr. Furze opened the meeting to public discussion. There was no public discussion.

The meeting was closed to the public.

A motion was made by William Curtis 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 Christopher Parlow. All were in favor.

Respectfully submitted,  
  
Claire S. Hense