

The Manasquan Planning Board held a regular meeting on Tuesday, August 7, 2012 at 7PM in the Borough Hall, 201 East Main Street, Manasquan, New Jersey. Geoff Cramer read the Open Public Meeting statement. Chairman John Burke called the meeting to order and asked everyone to please rise and Salute the Flag, he then asked the secretary to call the roll.

ROLL CALL – BOARD MEMBERS PRESENT:

John Muly, Patrick Callahan, Joan Harriman, Neil Hamilton, John Burke, Michael Sinneck, Leonard Sullivan

Councilman Owen McCarthy arrived at 7:09PM

BOARD MEMBERS ABSENT:

Mayor George Dempsey, Jay Price, Peter Ragan and Mark Apostolou

PROFESSIONALS PRESENT:

Geoffrey S. Cramer – Planning Board Attorney

Albert D. Yodakis – T & M Engineering – Engineer/Planner

John Burke stated the attorney for the applicant of the first application #11-2012 has informed us that his witnesses are not here, they are on the way. We have asked Mr. Fitzpatrick if he would like to go first and he said yes.

APPLICATION #14-2012 – Fitzpatrick, James – 64 Second Avenue – Block: 166 – Lot: 9 – Zone: R-2 – John Muly had to leave as he was not present at the former hearing of this case. John Burke explained that we have a quorum, we have six but we normally deal with 7 members and for his application he would need a majority of the Board. It's up to him if he wants to proceed or hold off until the next meeting. Mr. Fitzpatrick stated he would like to proceed. John Burke said the Board did a site inspection and he asked the Board if they had any questions from the site inspection, they said no. Mr. Fitzpatrick didn't have anything else to add but if the members had question he would answer them. John Burke said let the record show Councilman McCarthy is here. Joan Harriman feels the issue of seeing into the next yard in her mind if you had a two and a half-story house you have a deck upstairs you would be able to see into the yard too. John Burke said both Frank Morris and Mr. Fitzpatrick were both sworn in at the last meeting so that still holds and also Mr. Yodakis as well. Michael Sinneck made a motion to open the meeting to the public, the motion was seconded by Patrick Callahan, all in favor none opposed.

Audience Members Coming Forward:

Daniel Carey – 52 Second Avenue – he spoke at the last meeting and he got a copy of the 2003 Resolution for the Fitzpatrick property and he thinks it's very pertinent to the

Board's position on this. At that time the applicant made an application to do work on the house and he was given approval but the Board was very concerned because this building is overbuilt for the property as it is. They made conditions that he could do work on it but they put strict conditions on it. He had to give up one of the driveways, he had to fix up the sidewalk, he couldn't expand any further, and he had to stay within the setback lines. What was more interesting was the fact that the Survey that was submitted with that petition shows that at the time of that application there was a side entrance to this house from the southern driveway. The Resolution talks about that there was 35.7% existing coverage on the property, the application says that now there is 36.5% existing, which means that the petitioner. For this applicant to stand before this Board and say that he didn't know that he needed approval when he before the Board in 2003. He also complained about the front steps and the fact that a storage area was created under there which is an eyesore. He had a survey that was attached to the 2003 Resolution which Geoff Cramer marked as Exhibit O-1. Mr. Fitzpatrick said the side entrance had a raised deck which was removed, Mr. Carey agreed with Mr. Fitzpatrick. He said the driveway had been macadam and that was taken out and replaced with pavers to make less coverage. Mr. Carey because of the rear fence couldn't see the previous deck in the rear which Mr. Fitzpatrick said was there prior to his buying the house. Mr. Fitzpatrick said the deck in the front that was there is still there it hasn't been moved, they built the current front deck over the top of that deck on the same footprint. Mr. Fitzpatrick told Mr. Carey he was fortunate that he didn't have any damage from Hurricane Irene, as he had almost \$100,000. worth of FEMA payments which would have been move except they didn't cover every single thing. Mr. Carey said he isn't saying Mr. Fitzpatrick shouldn't raise his house he objects to the height of the deck. He also said the application of 2003 showed the building coverage to be less than it is now. Mr. Carey said it showed 36.5% existing building coverage which is greater than 35.7%. So what was built there? I'm talking about building not lot coverage. Geoff marked a 1997 Survey as Exhibit A-2. Mr. Fitzpatrick said the 2012 Survey is the exact same dimensions. Neil said maybe Al could chime in on this, we don't know if the 35.7% was correct. We also don't know if 36.5% is correct, but be that as it may you bring these numbers to light we are at .8% and maybe Al could chime in and say what is that in numbers, is it 8 square-feet we are talking about here. Al said it could be minimal, Dick Furey calculated the 36.5% and that was him taking a scale to this plan, he did not have an electronic copy of the Survey where he would be able to calculate down to hundreds of square feet here. If we have two Surveys that are showing the exact same thing from two different dates I would say it sounds to me like the .8% is a rounding error or scaling off a plan error. If we have two Surveys by two licensed Surveyors showing the same thing it doesn't sound like anything's been added. But these two Surveys are copies and not sealed and not very easy to read. Mr. Carey's position is Mr. Fitzpatrick created the situation and he shouldn't be allowed to benefit by saying I've done it it's better to seek forgiveness than it is to get approval. His position is the back deck is too high and he should be required to lower it. Frank Morris said they are about 3 to 4-inches higher than the minimum set by FEMA. You are not allowed to keep any of the wood in the flood zone, which causes the houses to be raised higher than they have ever been raised before. This is probably the highest house set now he has done in probably the last ten to fifteen years and he is going to have the same problem with other houses in Town which will be coming up. He didn't create that situation, it's FEMA that created the

situation that says the house would have to be raised above flood and they are giving money in Grants in order for people to raise their homes because they would rather have you raise the houses than keep paying out on these claims every time it floods. Flooding has increased on Second Avenue, he has worked on that Street for 25 years and never had a problem, in the last two years you can get a high tide, or if the wind is blowing right you can't get down Second Avenue and that never was like that in all the years he has worked down there. Sometimes the water is a foot deep and you can't even get out of your truck. He also feels that FEMA would rather have these decks above the flood zone because when the water comes they won't have these decks floating around and wood breaking up. People are not going to want to raise their houses and climb six flights of stairs and stand on a 12-inch step to try to get in and out of their home.

Vera Lindemer – 60 Second Avenue – She lives next door to the Fitzpatrick's. She had copies to pass out to the Board members of what she is going to read. John Burke said she first has to show it to Mr. Cramer. The letter is addressed to Mr. Burke; Mr. Cramer said she needed to give a copy to the applicant. She proceeded to do so and then read the letter in its entirety.

Catherine Lindemer – 321 Pine Avenue – The decks violate setbacks, the construction required a Variance and no Variance was obtained. She asked if there was any established fine for doing this or does everyone have carte blanche to do as they please with no repercussions?

Norman Mertz – 26 Second Avenue – He spoke at the last meeting in July and any encroachment on the 20-foot rear setback will set a bad and harmful precedent and that is what he is more concerned about is setting a precedent so that any homeowner in the area could come before the Board and use this as an example if he is given a favorable decision, and do the same thing. That's what he is concerned about is what it could do to the neighborhood. He feels the north section of Manasquan is a very favorable area to live in and we are very fortunate to be here. However, we want our property values and standard of living to be maintained.

Frank Morris said the existing deck that was there was already in violation because it was not on grade, it already was encroached on the 20-foot setback, so the violation was already existing. All we did was raise the deck up, we did not increase the distance there was from the property line. It was in existence for he doesn't know how many years. John Burke asked how high the deck was before and Frank said 16-inches off the ground.

Daniel Carey – again came forward and said the fact that it was raised up is an improvement of a violation. The fact was that it was down, they are saying on their own that there was a problem with the flooding, their raising it up increases, improves an existing violation. If they left it the way it was, sure you can't have it be moved because it was an existing violation. The moment you bring it up, the moment you improve it it's an improvement of the violation, that's a bunch of nonsense.

Mr. Fitzpatrick asked if pre-existing is grandfathered in, it's not a violation is it? Geoff Cramer asked what he is talking about, is it the rear yard setback? Mr. Fitzpatrick said well yes, since they were prior to whatever happened in Ordinances over the years, the deck being there when we bought it and before that, is that a violation. Mr. Cramer said his reading of the Resolution says that the Board gave a Variance for a 20-foot rear yard setback. John Burke said people in the audience are saying that now when you raise that

now you are increasing a Variance. Mr. Cramer said the argument is that there should be no relief given to an elevation of the deck to the extent that it's been elevated.

Daniel Carey – said he didn't get the Variance in 2003 because he didn't do the conditions that the Board gave him to get the Variance, he was supposed to give up a driveway, he was supposed to fix the sidewalk and a number of other things within a certain amount of time, he by his own testimony turned down the Resolution and did not take the Variance so he never had a Variance for it. He didn't satisfy the conditions of the Resolution so he never got the Variance.

Mr. Cramer said there were a number of conditions in the Resolution, those conditions were not meant to be cherry picked, they were meant to be satisfied before any permits or approvals were issued.

Vera Lindemer – she doesn't know when this application was filed but this is a letter from Mr. Furey who states application denied for the following reasons, and she named rear setback required 20-feet, 7-feet proposed. She stated its 7-feet existing, same thing she guesses. John Burke said it's not the same. Vera said Mr. Furey said to her that they use propose and existing intermittingly. But anyway it is existing. Owen McCarthy said the encroachment was there already. The height is a different story but now we're talking about the encroachment into the rear yard setback and 7-feet was what was there. John Burke said the deck was not on the ground, at 16-inches it was 7-feet setback and at 4 ½-feet it's still 7-feet. Vera said and 16-inches is allowed to be at 7-feet. Owen said that's what was pre-existing on the property.

Michael Sinneck moved to close the public portion of the meeting, the motion was seconded by Leonard Sullivan, all in favor none opposed.

Neil Hamilton said information has been brought to light that we weren't privy to and it goes back to this Resolution. You came to the prior Board in '03 and you got approvals and you did not comply with those approvals because of conditions that were put on your property, is that correct? Mr. Fitzpatrick said it came down to money, I couldn't afford to do it. Mr. Hamilton asked if in reference to the two driveways or the two curb cuts, Geoff has the Resolution there. If the Resolution stated you needed to remove the impervious coverage or did the Resolution state that you are only entitled to one curb cut. Michael Sinneck said he agreed to relinquish the curb and the driveway on the north side of the property. Geoff said that's condition #3 on page 5. Neil said so you are not complying with that is there anything else in that Resolution where you are not compliant with. Mr. Fitzpatrick said the wording on the application is different this time, it didn't say that any further matter would be before the Board and Mr. Burke who lives down the Street is the one who noticed the curb cut and I said let's go for it but he said I would have to come back, re-notice everybody and come back the following month. At that point it's starting to run into money, noticing costs a couple of bucks again. Neil said in this Resolution just refresh my memory did you do anything, when you came to that Board asking for relief and you stated that you then ran short of funds, was any work done in reference to that Resolution? Mr. Fitzpatrick said no none. Mr. Hamilton said then that Resolution would have expired so the applicant would have to start all over again, is that correct Mr. Cramer? Mr. Cramer said the Variances approved shall expire within 9-months calculated from the 45th day following the date the notice appeared in the newspaper. Neil said even if he had an extension at that time he would have only been given one year anyway. Geoff said a one year extension of only 9-months. Neil said that Resolution and

that application is now null and void. Neil said so right now the application before this Board is we're starting over from scratch. That being the case is the way the application filed to the Zoning Officer and presented to this Planning Board is that the correct application that is before us and properly noticed? Geoff said notification and service on the property owners within 200-feet was properly accomplished; now what the applicant is looking for is a whole new approval for a whole new rear deck that's elevated considerably above what existed back in 2003, so you have to consider what's there right now, that's the basis on which you can proceed. Neil asked how about the curb cuts? Geoff said the curb cuts were a condition to the prior approval, which was abandoned. So that is no longer a viable condition it's not part of what you are looking at now. Neil said so he would need a curb cut Variance tonight if he proceeds on, is that correct? Mr. Cramer said he can only have one curb cut. John Burke asked Pat Callahan how much of Dick Furey's report is not right? Because he obviously wrote this thinking that the approvals on the Variances of 2003 were existing. Pat said he is going by the application now. He did his own calculations. John said should this be looked at again? Owen said looking at the 2003 Resolution, paragraph 11 with respect to the rear existing deck, it was noted that the deck was at grade and therefore be included in the calculations with respect to building coverage. So, in 2003 was the deck at grade? Mr. Fitzpatrick said no, the Survey shows that it wasn't. Owen said he would trust that somebody in 2003 would understand the difference between grade and 16-inches, it seems like there were a lot of things that were unusual with this property and apparently somebody on the Board in 2003 thought it was a good idea to get rid of that second curb cut. I think if someone comes in front of this Board asking for relief, and I do think if they are trying to expand a "pre-existing" non conforming structure, we have the right if we are going to give relief to ask for something in return. If that's going to be the case, if he wants this deck, well maybe you don't have that second curb cut. Lenny said there were more things in that Resolution. John Burke polled the Board for their opinion on this right now before they go any further and sit here and argue minor points all night long. Joan Harriman said yes let him raise the deck. Mike Sinneck voted no, he thinks the height is excessive. Owen McCarthy has concerns looking at this Resolutions and the calculations of what was there in 2003, he has some uncomfortable reservations about granting this relief at this point. Geoff Cramer asked him if he would like to take a look at the earlier file and he answered that if the file is available to have someone in Pat's department do something for comparison and let us know according to the Borough records what do we have this property existing as in 2003. And what is it today? We are asking for somebody to give us relief. John Burke said he has reservations also but when he looks at the two decks he would probably say yes on the front deck and no on the rear. Patrick Callahan said with these questions being raised about the 2003 Resolution we may have to explore this further and he would recommend carrying this to the next meeting to give us a chance to review everything that is in the 2003 Resolution. Lenny Sullivan said he agrees with that and he agrees with Owen, he thinks we need to have a better handle on what we're talking about here. All of this just came up, Mr. Carey brought this up tonight and he is uncomfortable unless he understands everything that went on and what it looked like then and now. If you force me to vote without having all the information I would probably not vote for it. Neil Hamilton said he agrees, we have to pull the file. The Zoning Officer has to restructure his denial on that, two curb cuts weren't prior approved and that's going to be issue as well. Owen said and

maybe look at some of the minutes from then so we can have an understanding as to what was described, what representations were made. He doesn't think we have all the information here, and you may be right but you also may be wrong and I don't think it's fair to you or your neighbors for us to base a decision on an incomplete record. Lenny said also in the minutes from the meeting there may be some logic about why they did what they did. John Burke said he would like to have Dick Furey look at it and he would also like to have an Engineering report from T & M. Mr. Fitzpatrick had a picture he wanted to share and John Burke told him to give it to Mary when he gives her stuff for the next meeting. He then asked Mr. Fitzpatrick now that he heard the feelings of the people on the Board now he asks him will you let us continue this to the meeting in September. Mr. Fitzpatrick said yes. Neil asked once the research is done what is going to happen then, are you just going to come back and the evidence and report from Al will be put in our packets and Mr. Furey. John Burke said he wants Dick Furey to look at it again and maybe revise his denial according to what he sees and have him look at the 2003 file also so that he has an idea if there is any difference. Neil said that denial would be made public on the Thursday prior to the hearing so these folks have an opportunity to look at it. Mary said when this application first went to the Board she didn't require enough escrow to have Al do an Engineering report because she was told we didn't need one. John said inform Mr. Fitzpatrick tomorrow how much further escrow is going to be required. Frank Morris asked if the Board can separate the front deck from the rear deck. John Burke said we don't have enough information and we might find something different on the front too in the 2003. Neil Hamilton made a motion to carry this application to September, Joan Harriman seconded the motion. The date is September 11, 2012, all in favor none opposed. *APPLICATION CARRIED WITH NO RE-NOTICE OR RE-PUBLICATION*

APPLICATION #11-2012 – ARJHAN, LLC – Baghari, Kaz – 530 Brielle Road – Block: 176 – Lot: 8 – Zone: R-3 – Robert Clark is the attorney representing the applicant, Michael Napolitan is the Architect/Planner for the project. Mr. Clark said the plans were changed since the July meeting responding to the various issues that were raised by the Board. Certain comments such as the height they requested, the Board said 30-feet would be appropriate. Plans were resubmitted and a lot of requests were addressed on the resubmission, we received Mr. Furey's revised denial letter of July 30, 2012 and there was no additional report from the Engineer which he believes would have been unnecessary. He addressed the Board's comments and the denial letter. Mr. Napolitan said the height of the building will be 30-feet, the building coverage is basically the same as existing but less than previously proposed and lot coverage is also reduced from the prior application. Al said at the last meeting the height issue was the biggest concern of the Board and they have addressed that. The building and lot coverage came down slightly so the Variances have been decreased slightly. Michael Sinneck questioned the purpose of the overhang. Mr. Napolitan said it's really just to break up the façade of the building, it's aesthetic without that it would be a box. Michael Sinneck made a motion to open the meeting to the public, the motion was seconded by Patrick Callahan all in favor none opposed. There was no public participation. Neil Hamilton made a motion to close the public portion of the meeting, the motion was seconded by Leonard Sullivan, all in favor none opposed. Michael Sinneck made a motion to accept this application as modified and with the stipulations heard in testimony, the motion was seconded by Patrick Callahan.

Board Members Voting Yes:

Patrick Callahan, Councilman McCarthy, Joan Harriman, Neil Hamilton, Neil Hamilton, John Burke and Michael Sinneck

No negative votes

APPLICATION APPROVED

Michael Sinneck made a motion to accept the vouchers, the motion was seconded by Leonard Sullivan all in favor none opposed.

VOUCHERS APPROVED

RESOLUTION #12-2012 – SanFilippo, Nicholas – 422 Long Avenue – Block: 174 – Lot:

121.04 – Zone: R-5 – Board members voting yes to memorialize the Resolution:

Patrick Callahan, Joan Harriman, Owen McCarthy, Neil Hamilton, John Burke, Michael Sinneck and Leonard Sullivan

RESOLUTION MEMORIALIZED

RESOLUTION #13-2012 – Diana, Frank and June – 401 First Avenue – Block: 186.01 –

Lot: 10 – Zone: R-5 – Leonard Sullivan made a motion to memorialize the Resolution, the motion was seconded by Patrick Callahan. Board members voting yes:

Patrick Callahan, Owen McCarthy, Neil Hamilton, John Burke, Michael Sinneck and Leonard Sullivan

RESOLUTION MEMORIALIZED

John reminded the Board to keep all their paperwork on the Fitzpatrick application.

Joan Harriman made a motion to approve the minutes of the June 12, 2012 Regular meeting, the motion was seconded by Neil Hamilton, all in favor none opposed.

MINUTES OF JUNE 12, 2012 APPROVED

Regarding Ordinance #2118-12 – The elimination of Flag lots - the Board was in favor of the Council having a second reading and passing of this Ordinance.

Regarding Ordinance #2119-12 – Deals with structural alterations inside to the interior of a non-conforming structure shall be permitted providing that the structural alterations do not expand or extend the footprint, height or the non-conforming structure. There was discussion by Board members regarding this proposed Ordinance, Owen said if there are questions he will talk to Mark Kitrick and talk to Dick Furey as to his comments and delay the second reading.

Patrick Callahan made a motion to adjourn the meeting, Leonard Sullivan seconded the motion all in favor none opposed.

MEETING ADJOURNED AT 8:56PM

Respectfully Submitted,

Mary C. Salerno

Planning Board Secretary

