

The Manasquan Planning Board held a Regular meeting on September 1, 2015 at 7PM in the Council Chambers of the Borough Hall, 201 East Main Street, Manasquan, NJ. Chairman Neil Hamilton asked everyone present to please stand and salute the Flag.

ROLL CALL:

Board Members Present:

Mayor George Dempsey, Chairman Neil B. Hamilton, John Muly, Paul Rabenda, Greg Love, Leonard Sullivan, Mark Apostolou, Robert Young

Board Members Absent:

Joan Harriman, Councilman Owen McCarthy, John Burke (arrived at 7:10PM)

Peter Ragan, Kevin Thompson

Professionals Present:

Geoffrey S. Cramer – Planning Board Attorney

Albert D. Yodakis – BORO Engineering, Planning Board Engineer/Planner

Geoff Cramer, Board Attorney read the Sunshine Law Meeting Act Statement.

Neil Hamilton had a letter from Paul Rabenda stating that he is retiring from the Borough as a Plumbing Inspector and therefore cannot sit on the Board as a Class II member. The Board was in agreement that Paul will be sorely missed as he not only made them laugh but had a lot of good input. Mayor Dempsey said he brings a lot to the table and will be missed greatly. Paul said he will also miss the Board and the members.

Minutes of August 4, 2015 – Mark Apostolou made a motion to approve, seconded by Greg Love, all in favor none opposed.

Vouchers – Lenny Sullivan said they are in order, seconded by Paul Rabenda.

Roll Call to Pay the Vouchers: Mayor Dempsey, John Muly, Paul Rabenda, Greg Love, Lenny Sullivan, Mark Apostolou, Robert Young and Neil Hamilton

RE-STATED RESOLUTION #35-2014 – Tritsch, Timothy – 58 Stockton Lake Boulevard – Mark Apostolou made a motion to memorialize, seconded by Paul Rabenda.

Board Members Voting Yes:

John Muly, Paul Rabenda, Greg Love, Mark Apostolou, Robert Young

RESOLUTION MEMORIALIZED

Neil then stated Victoria Fattell of 573 Main Street, would have had to come back and re-notice and re-publish in order to return to request additional height on her house. As it turns out they are going to reduce the height of the ceilings on the first and second floor, to

maintain the height that was approved by this Board that will accommodate their needs to park underneath the house. They will not be here this evening.

John Burke arrived at 7:10PM

APPLICATION #40-2014 – Immersberger/Hochschild – 479 Euclid Avenue – Block: 143 – Lot: 10.03 – Zone: R-2 – (Carried from July 7, 2015) – Neil asked if the attorney would identify himself as the applicant came the last time without representation. Ronald Isgate, Council for the applicant, he is with Isgate, Chiccarine & DeGroot – The Conley Building, 80 N Main Street, Suite 2A, Doylestown, PA 18901. Neil said the problem we have sir is the direction we gave to the applicant at the last meeting is the fact that the Board was not satisfied with the condition of the property, the way it looks. There is still material across the Street on the boat dock, even tonight there is no improvement on the property. There is construction material strewn about, there is equipment and that was our direction to the applicant to address that and get that property back in shape prior to a new hearing and that has not occurred. Mr. Hochschild said the only items left there now are items that will be used when we finish up the rest of the work and some of that can't be completed without a variance and/or building permits. There is no place else to store the items that will go on the patio. Neil said you came before the Board years ago for that deck and it just seems like it's always an ongoing construction site, it doesn't seem to be completed, frankly it's not aesthetically pleasing to me when I ride by. The site is always in disarray, I think the Board is just concerned it's always going to be like this once you get our approval. Mrs. Hochschild said we had the whole front yard sodded, we built the deck, it was all landscaped, the table, chair and grill were on top of the raised patio. That yard was in perfect shape until Sandy came along. Since Sandy we had to move everything out of the garage, everything out of the crawl space, then we had to lift the house and we have been trying to move things back. She has started to clean up the property and improve it. Lenny said this application doesn't have anything to do with the problem the Board has with the property, so why not finish what you started and get the property back in shape and then come to us for this application. This has to do with a deck on your second floor, this has nothing to do with the property and the approvals you have had in the past that you haven't completed. Mrs. Hochschild said she knows the bulkhead is not appealing to many people on the Board and maybe some other people in Town and they are trying to come up with a different plan for that area, which is why that is not re-built. Geoff Cramer said you have a work in progress but you haven't completed that work. Mr. Isgate said a lot of the materials on site are for this deck, they did buy ahead of time, can we store it off-site, no. If the Board wanted it stored off site we might be able to make an accommodation. If the Board gave us a variance to be able to put up this deck all the materials on site would be used for the deck and would be gone. We are not housing materials for another construction site. Yes it is there, yes it has been there. If this deck is built all those materials will be gone. Mr. Hochschild added a statement about the property pre-Sandy and post-Sandy and house lifting. Neil said he thinks we are at the point Counselor, the Secretary was not contacted. We didn't even know if you would be here this evening. The Board kept their packets and neither he nor most other Board members did not bring their packet this evening. He said he even asked Mary today if she had heard from you and

certainly retaining Council, I think a phone call out of courtesy, you should have contacted her. What you need to do sir, is you need to carry this to the next meeting. We will all have our packets and be prepared. Mr. Isgate said that is absolutely fine. Mayor Dempsey said get the deck done. Mr. Isgate said we can't get the deck done until we get the variance. George said I'm talking about the raised patio, three years ago. It's been three years since Sandy, you ride around Town you don't see that kind of mess around Town. Paul Rabenda said he believes there was also some kind of talk about how the construction was going to be done. The angle pieces that go back to the house, there was some kind of cantilever with steel involved. Al Yodakis said he thought part of the issue was we were going to decide what the construction was actually going to be and architecturally what it was going to look like. Lenny Sullivan said we also talked about making the deck smaller. Mark Apostolou suggested to Council that he obtain a transcript of that night because his client came in with an application, the Board gave its opinion, I was of the understanding that there was going to be a revisal and plans were going to be re-submitted. There was going to be a revision of what in fact was being applied for based on the Boards give and take. He suggested that he either order a transcript or listen to that tape because he for one is taken completely anew. It seems as if we are going back to square one with the application, that there have been no revisions. Mr. Izgate asked if it is the Board's position that they would like revised plans. Mayor Dempsey said you can order a CD of the meeting. Neil said we will carry this to the October 6th meeting. If you listen to the tape you will hear what the Board's requests were. Any adjustments or modifications to the original plan will have to be submitted to the Secretary which she will get out to the Board and also to the Zoning Officer if he needs to do any correction on his denial. We are not requiring any further notice or re-publication. If any objectors are hear or any interested neighbors you will be coming back on October 6, 2015, 7PM.

APPLICATION CARRIED

APPLICATION #25-2015 – Livelli, Paul – 559 Salmon Avenue – Block: 184.04 – Lot: 4 – Zone: R-3 – Geoff swore in Paul Livelli and found the file to be in order. Mr. Livelli said he is going to raise his home 4-feet but because of front and rear setback he needs Variances. They are trying to incorporate other changes to their home as a result of his wife having cancer. He has requested putting a roof over the existing deck and a second floor deck to give shade to his wife to use those decks for access to the outside; this is why he needs the front setback Variance. He had pictures to demonstrate that other houses on his Street have a roof over their front deck and a deck on the second floor. He is not going to extend the deck any closer to the curb than it is now. The rear deck will be 15-feet across the back of the house where at present there is no deck existing there now; it would extend out 14 ½-feet out which would give them a 6-foot distance between the rear property line and the edge of the deck. This is to elevate the existing hot tub and shower, incorporate a chair lift that the State has provided funds to them in a Grant for that lift. They would also like a table and steps to get down. He hired an Architect and a reputable Construction company to do the work. Mayor Dempsey asked where the lift and the steps coming down, how much room do you have from the steps to the property line. Mr. Livelli said 9-feet. Neil said for those who have not done a site visit, we may have approved some of the other homes on that Street that have been recently elevated and the same scenario, they took

their first floor deck up and they have a roof over it and the rear decks raised up with the house as well. This particular property has no rear deck but once you elevate the house you are going to need some sort of stairs. Paul asked if the shed was still there, Mr. Livelli said the shed will be moved and be compliant. John Muly addressed the TRC report, he said they felt the request for the porch roof was justified and others on that Street have the same thing, if you are just raising it up this would make it a little more aesthetically pleasing. We recommend the rear deck be approved, primarily because you need it for access to the back of the house, once you raise your house you can't get in or out without a deck there. Paul said any approval should include the relocation of the shed, and that the shed meets all setback requirements. Al Yodakis asked if the front setback was changing and Mr. Livelli said no. Mark Apostolou made a motion to open the meeting to the public, seconded by Mayor Dempsey, all in favor none opposed. There was no public participation. Mark Apostolou made a motion to close the public portion, seconded by Mayor Dempsey, all in favor none opposed. Mr. Levelli thanked the Board for their time and consideration in this matter and a special thanks to Mary who helped him through this process. Leonard Sullivan made a motion to approve the application with the condition on the shed, seconded by John Muly.

Board Members Voting Yes:

Mayor George Dempsey, John Muly, Paul Rabenda, John Burke, Greg Love, Leonard Sullivan, Mark Apostolou, Robert Young and Neil Hamilton

APPLICATION APPROVED

APPLICATION #26-2015 – Hawryluk, Raymond and Kathy – 448 Long Avenue – Block: 174 – Lot: 99 – Zone: R-3 – Neil Hamilton said the Board has a letter received from an attorney representing an objector, Edward Liston. Mr. Liston stood and said he represents Theresa and Andrew Graw who own the property directly to the west of this property. The letter was directed to the jurisdiction issue, because the notice that was sent out by the applicant, he believes is deficient in several respects and he spelled that out to the Board attorney in his letter. One of the statements in the notice is on the side setback, which is the side next to my client's property where they are seeking a Variance. It says allow main entrance stairs to extend 1-foot, 6-inches into west side setback which is still within the footprint of the old house. That is absolutely incorrect. It is not within the footprint of the old house, as the survey has shown. He thinks since this is a contested matter, he asks the Board to adjourn it and to instruct the applicant to re-notice property so that the public is aware of exactly what is being asked here. Because, if the notice is found to be deficient, anything that happens here is null and void as your attorney can explain to you. Neil asked Mr. Liston if he was aware of the direction this Board received from Mayor and Council and the Borough Attorney with reference to a Senate Resolution, right after Sandy giving the Boards power to allow folks to re-build their properties without coming back to the Planning Board as long as they built within the same footprint. Mr. Liston said yes, he is aware of that, and that's why they are here, they started out building and then it became known to your Code Enforcement Officer that they had exceeded the footprint and yet in this notice they are saying they are within the footprint which is absolutely incorrect. So, the notice is deficient on its face and if we go ahead and have a hearing regardless of the result, either party can appeal and we'll be back here again because I think a Court will

find legitimately that the notice was deficient so the Board lacked jurisdiction. Mayor Dempsey said, you are saying that the foundation has increased in square footage. Mr. Liston said no, what I'm saying the notice says is the main entrance stairs to extend 1.6-feet into the west side setback, which is still within the footprint of the old house, it's not. The footprint of the old house was 3.5 feet. On its face, it's incorrect. Rather than have to do this twice I asked the applicant if he would consent to an adjournment and he said no. So, I am forced to place this jurisdictional argument on the record. Mayor Dempsey said what the Mayor and Council provided is to allow steps to go into that setback because of the need of the elevations. Mr. Liston said that is not a change in the Zoning Ordinance and they wouldn't be here asking for this Variance if it didn't violate your Zoning Ordinance. Neil Hamilton said they don't need a Variance from this Board this evening for the side setback. Mr. Liston said he believes they do, they have applied for it, they believe they do, so under the circumstances they are putting a main entrance directly next to my client's bedroom. I don't know why it was designed that way; I don't know why they couldn't have their main entrance in the front of the house as most of us do. Neil deferred to Geoff Cramer, Board attorney. Obviously the neighbor would have rather seen the full wall of a two-story house remain at the 3.5-foot setback, which they could have done without any issues as opposed to moving the house to the east and then just having the steps as the view. Mr. Liston said what that did was create the main entrance to the house directly opposite from my client's bedroom which is intrusive and there is no reason for it. The other thing that is not called out in the notice is the fact that their air conditioner is on my client's side of the property and also violates the setback. That wasn't called out either. Neil said it's your opinion that we just hold this off and drag it out for another 30-days rather than try and address these issues tonight in a public hearing and resolve them. Mr. Liston said you can have your public hearing if you want but if my client's are aggrieved by the result we have no alternative then but to go to the Superior Court Law Division, and the first issue is going to be jurisdiction. Geoff Cramer asked Mr. Hawryluk if he really wanted to have this side entry where you have it on the plans, correct. He said yes. Geoff asked about the air conditioner and Mr. Hawryluk said that has been corrected, he addressed it with the Zoning Officer that it will not be in the side. Mr. Liston said as long as it's not within the side setback, it's satisfactory. Mr. Hawryluk said the house itself will be 7 ½-feet from the side setback and the air conditioner will be in the rear on the deck facing the rear of the house. Board members asking questions were Paul Rabenda, Mark Apostolou, Lenny Sullivan, this house is new construction and the Board's feeling is this is not subject to a waiver. The house was relocated on the lot. It was moved to the East away from the neighbor's house. Mr. Liston said there is still a Variance required for the steps and to him that is intrusive to his clients. A building permit was issued although the plans seem to indicate Variances were necessary, he doesn't know how that happened. Now, the building is under construction and we get a notice that he is seeking Variances, he has solved the problem with the air conditioner but the biggest problem we have is the intrusive nature of a main entrance facing my client's side where their bedroom is located. Mr. Cramer thanked Mr. Liston and asked Mr. Hawryluk if he had any interest in relocating the main entry into his house away from your neighbor's side yard. Mr. Hawryluk said the house is really built at this point, the interior is being finished; we really don't have a way to move things. Mr. Cramer said what you have tonight is Mr. Liston on behalf of your neighbor's

taking the position that your notice that you gave is deficient the way it's written currently. Mr. Hawryluk said he doesn't believe that, his numbers are incorrect, the old house was 3 1/2-feet from the west property line, that's on our Survey, the comments are correct, we could have done a mirror image, put the long side of the house on that 3 1/2-feet, we would have had 9-feet down on the other side, which would have given us 5 for the setback, 4 for the stairs, we would not have needed a Variance. We didn't feel that we wanted to put a house right up against our neighbors that close, so we went the other way, so now we have 5-feet on the east side, 7 1/2 on the west and it's almost centered and it gets us to 4-feet for the stairs which are still within the old footprint. Geoff said but your neighbors are still concerned with your side entrance. You didn't have an attorney prepare this notice that you gave to your property owners within 200-feet or that you published in the paper, an attorney may have been able to avoid this predicament but obviously you did it yourself. The notice as far as it goes attempts to comply with the statute but as Mr. Liston points out there are some miss-measurements here, based upon what that notice says, it's not entirely accurate. Mr. Hawryluk said he doesn't believe there is a difference in the notice, we corrected that and put in a second notice. Mr. Liston said there was a notice that was approved by the Zoning Officer, Mr. Hawryluk then changed that, and added some language to it, changed the measurements but the deficient part of the notice as he sees it is misleading. It says to allow main entrance stairs to extend 1-foot, 6-inches into the west side setback which is still within the footprint of the old house, that doesn't apply and it's incorrect. The old house's footprint was further to the west, secondly this is a complete rebuild so there is no justification based on old footprint for any of this, it should have been caught at the beginning and unfortunately it wasn't, but I don't see why my clients have to pay the price for that and have their privacy invaded. Mark Apostolou asked Mr. Liston if he agreed that he really has no objection in the sense as to where their entrance is, it's the stairwell. Mr. Liston said if people are going to be walking in and out of there at all times of the day or night, which is their right. Mark said but for the stairwell you'd have no right to object to somebody locating their entrance way. Mr. Liston said but for the stairwell there would be no Variance on that side, if he wanted to have a picture window there, he could do that, there is no question about that. Mark said he just wanted to establish that. Mr. Liston said I don't know why it was designed this way, why the main entrance is on the side and not in the front. Mark said it's already constructed, so if they remove the stair well which in fact creates the Variance issue, then you have no standing to object to it. Mr. Liston said that's correct, if it's not an entrance, if it's a picture window. Mark said no, even if it's an entrance, if the stair well is not invading the side yard, if somehow they built it in and it's within that, you have no standing to object. Mr. Liston said if he is Variance free, you are absolutely correct. Mark Apostolou said maybe his Architect can re-work those stairs so they are not into the side yard, then the gentleman no longer has an argument. Mr. Hawryluk said his house is essentially a raised ranch. Mr. Liston said frankly a formal entrance like a front entrance on the side facing my client's bedroom is a clear violation of their right to privacy in his view, if he can do it consistent with the Ordinance we don't have an argument other than perhaps a nuisance argument, but here where he is violating the Ordinance, we have an argument and we intend to pursue it. Neil said obviously this not going anywhere and Mr. Cramer has to make a call. Mr. Cramer said in your position, obviously you heard what Mr. Liston's clients objections

are, you may want to revisit that with your Architect, and also you may want to revisit the reformulation of the notice with an attorney that can put it in a form that will be not raised as specter of a lawsuit challenging the Board's jurisdiction to hear the case at all. Mr. Hawryluk said he appreciates the advice. Mr. Hamilton said he thinks the Hawryluk's attorney needs to contact the Zoning Officer, Dick Furey. I would start there so you are both on the same understanding of the Ordinance. John Burke said you should contact your Architect to see what he comes up with regarding the stairs. John Burke said if your stairs are 1 ½-foot narrower there is no Variance and the gentleman standing at the microphone won't even be here. Mr. Hawryluk said he is also confused about the footprint because there have been other homes that have been demolished and cited within a footprint as a reason to allow. I need to find out something further about that too. George asked the dimensions of the new building, width and length. Mr. Hawryluk said 27 ½ X 50. Mr. Liston said a very narrow stairway may not comply with Fire Code. Mrs. Hawryluk said she wanted to explain why they put the side entrance as the main entrance. Her parents home burned down, her father got out of the house by going out the side door with our dog, and I wanted a way to get in and out, otherwise it was just coming in through the garage. Neil said we are done Council. Mr. Liston said he thinks your Code Enforcement Officer ought to at least stop the construction for the time being until this is resolved. Neil asked the Hawryluk's if they would be prepared to come back to the next meeting and they said they would. Paul asked the stage of construction, the applicant's said about 3 days away from sheet rock. The siding is being done as we speak. Paul said he can't imagine they can't make some kind of alterations to the interior of the building to accommodate stairs, you would probably lose a little floor space somewhere. Mr. Liston said his problem is this is the main entrance and it belongs in the front of the house. Mr. Cramer said he suggests the Hawryluk's visit with an attorney, as well as their architect and that you proceed forthwith to amend the notice, both to the property owners within 200-feet as well as publish in the newspaper and you will be looking at that October 6, 2015 to come back to the Board. Neil said make sure Mary is notified that you can make that meeting. Mr. Hawryluk said we will, Mary's been very helpful.

APPLICATION CARRIED TO OCTOBER 6, 2015

APPLICATION #27-2015 – Hogan, Robert – 20 Dewey Avenue – Block: 117 – Lot: 1 – Zone: R-1 – Geoff Cramer swore in Bob and Judy Hogan, applicants. Mr. Hogan gave him and his wife's background and the reason for appearing before the Board. They propose two small additions on the ranch they purchased; one is to move the washer/dryer from the basement to the main floor. There is a small alcove at the rear of the house which they want to enclose and run it straight across the back of the house and on the south side, they are putting a small addition in front of the fireplace to accommodate some closets, for this they don't need a variance. They are planning to go out 9-feet on that side. They are removing all the broken concrete in the rear and replacing it with pavers, so that's a plus. John Muly addressed the TRC report which they felt is deminimus. Bob Young asked about the location of the A/C units, Mr. Hogan said they will be keeping them where they are but raise them on a concrete slab and put some decorative buffer around it. They were told the house didn't sustain any damage during Sandy. There were no other comments from the Board, Mark Apostolou made a motion to open the meeting to the public, seconded by Mayor Dempsey. There was no public participation. Mark Apostolou made a

motion to close the public portion of the meeting, seconded by Mayor Dempsey. Mr. Hogan thanked the Board for their time. Mark Apostolou made a motion to approve the application as submitted subject to the removal of the impervious surface, seconded by Mayor Dempsey.

Board Members Voting Yes:

Mayor George Dempsey, John Muly, Paul Rabenda, John Burke, Greg Love, Leonard Sullivan, Mark Apostolou, Robert Young and Neil Hamilton

APPLICATION APPROVED

Neil said there is a letter of correspondence from John Roche, Erna Drum's son regarding her property and application to the Planning Board for an addition and her garage at her property at 29-31 Atlantic Avenue. The Board gave her approval, the garage is completed however there is still other work to be done to the structure and they are asking for an extension of time and he said he doesn't have a problem with it. Mark Apostolou made a motion to extend, George Dempsey seconded the motion, all in favor none opposed. Mary will send a letter to her son explaining the Board's vote.

There was a unanimous agreement to cancel the second meeting of September.

Comments from individual Board members – Neil said he doesn't know if the Board is all on the same page on the incident that came up tonight. George Dempsey said the intent of the Mayor and Council was, if you had a house say 30 X 50 and you had 3-feet on one side and 9-feet on the other side. You could tear it down and build the same footprint and center it, without a Variance. Lenny said that's exactly what they did and the stairs are within the 3 ½-feet side yard. George said we were allowing stairs to go into the side or front setbacks or back setbacks as long as they didn't go into the right-of-way. Lenny said based on Mayor and Council they should be able to do it.

Motion to open the meeting to the public was made by Mark Apostolou seconded by Paul Rabenda, all in favor none opposed.

Audience Member coming forward:

Andrew Marcucci – 37 N Main Street – He said this is just a follow-up to his appearance a few months ago. He wants to know what the procedure would be to find out what's going on as far as the row of bushes across the Street from him at 98 Atlantic Avenue, the Dairy Queen Complex. In August 2011 when they were granted their subdivision by this Body, one of the four conditions was the fact that the bushes had to be at least high enough to block the headlights from the cars facing Atlantic Avenue. They planted shrubs that are maybe 2 – 2 ½-feet high that are obviously ineffective. The phrasing of the language in the Resolution states that that specifically. Neil said he is going to have to go back to the Code Enforcement. Mr. Marcucci said we have done that, they actually took it to a Court appearance and for whatever reason the Court ruled against the Code Enforcement Office, which makes no sense because if you visually look at these bushes they don't effectively block the headlights. Mark said you would have to take an appeal of that decision to the Superior Court. Mr. Marcucci said we didn't bring that case, it was actually brought by

the Code Enforcement, intrinsically the bushes are still not anywhere near the height they need to be. Neil said he would mention it to Mr. Furey, Zoning Officer again.

Motion to close the public portion of the meeting made by Mark Apostolou, seconded by Greg Love, all in favor none opposed.

Mark Apostolou, Lenny Sullivan and Paul Rabenda will not be in attendance at the October meeting.

Motion to close the meeting made by Mark Apostolou, seconded by Leonard Sullivan, all in favor none opposed.

MEETING ADJOURNED AT 8:15PM

Respectfully Submitted,

**Mary C. Salerno
Planning Board Secretary**