

The Manasquan Planning Board held a Regular meeting on April 4, 2017 at 7PM in the Council Chambers of the Borough Hall, 201 East Main Street, Manasquan, New Jersey. Chairman Hamilton asked everyone present to please stand and salute the Flag.

ROLL CALL:

Board Members Present:

Mayor Edward Donovan, John Muly, Mark Apostolou, Mark Larkin, Kevin Thompson, Neil Hamilton

Board Members Absent:

Councilman James Walsh, Robert Young, Greg Love, Peter Ragan, Leonard Sullivan, John Burke, Barbara Ilaria (Mayor's Alternate)

Professionals Present:

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

Geoffrey S. Cramer – Board Attorney

Geoff Cramer read the Rules of the meeting.

Approval of Minutes – February 7, 2017, regular Meeting – Mark Apostolou made a motion to approve, seconded by Kevin Thompson, all in favor none opposed.

Approval of Minutes – February 22, 2017, Special Meeting – Mark Apostolou made a motion to approve, seconded by Kevin Thompson, all in favor none opposed.

Approval of Vouchers – Motion to approve made by John Muly, seconded by Kevin Thompson.

Board Members Voting Yes:

Mayor Donovan, John Muly, Mark Apostolou, Mark Larkin, Kevin Thompson and Neil Hamilton

RESOLUTION #34-2016 – LaPatta, Richard – 459 E Main Street – Mark Apostolou stated that as a condition of this it should be included that the applicant stated a hardship and therefore the affirmative vote was based on the lift being installed. Neil said prior to the final construction C/O they must be in Resolution compliance. Mr. Cramer will update the Resolution to state this condition. Kevin Thompson made a motion to memorialize, seconded by Mark Apostolou, all in favor none opposed.

RESOLUTION #39-2016 – Reynolds, Kevin and Lynn – 25 South Potter Avenue – Mark Apostolou made a motion to memorialize, seconded by Kevin Thompson, all in favor none opposed.

RESOLUTION #43-2016 – Hegel, Terrence (Atlantic Modular) – 72 Atlantic Avenue – Kevin Thompson abstained from voting – Mark Apostolou made a motion to memorialize, seconded by Mayor Donovan, all in favor none opposed.

RESOLUTION #1-2017 – Bernstein, Francine – 556 Salmon Avenue – Mark Apostolou made a motion to memorialize, seconded by Kevin Thompson, all in favor none opposed.

RESOLUTION AMENDMENT #16-2014-A – Reef & Barrel – Coastal Restaurant Group – 153 Sea Girt Avenue – James Kinneally is the attorney representing the applicants. Mr. Kinneally said in 2014 the Board approved the roof top deck at then Edgar's now Reef and Barrel. In testimony at that time, it was indicated that they wanted a roof top deck basically from Memorial Day to Labor Day. The operation of the deck has been a success, there haven't been any complaints. In fact, it's been so popular they would like to use it when weather permits. The way the Resolution is written it limits the use of that deck from May to September. Neil asked if they noticed for this meeting and Mr. Kinneally said yes. Geoff said the file is in good order and accepted jurisdiction. Geoff Cramer swore in Christopher Fahey and Robert Fahey, owners/applicants, and Al Yodakis, Board Engineer. Neil said it looks like the bottom line is we are just trying to amend the Resolution to take that restriction out as weather permits, whatever time of the year the sun shines and it's warm you are welcome to comply with your liquor license issued by the Borough. Mr. Kinneally said and all of the other conditions of the 2014 approval remain in full force. Mark Apostolou said and that's the roof top totally vacated at 10pm, last seating at 9pm, and limited to 40 people. Mr. Kinneally said yes. Mr. Cramer said there is a settlement agreement with respect to litigation, commenced by the Borough of Sea Girt, that identified your client as a defendant and also this Board. That settlement agreement is still in force and affect. That provides specifically that the approval for roof top dining is only from May through the end of September. So, if you want other times he thinks there should be some effort made to reach out to the Borough of Sea Girt's attorney and get this agreement modified consistent with the intention that if it is to be anything other than that, it has to be subject to a modification in writing by all the parties. Mr. Kinneally said the Sea Girt Mayor and Council have passed a Resolution indicating that they are in favor of use of the roof top deck weather permitting for a period of one year. At the end of the one year we will revisit the issue, since that's a temporary thing. The Sea Girt Borough Attorney has taken the position that we do not need a written amendment to the settlement proposal until next year. Because, I suggested the same thing and he indicated as recently as this afternoon that he did not wish to do that. Geoff asked if this was Mr. Montenegro and Mr. Kinneally answered yes. Neil asked if there was anything in writing from Sea Girt to support our decision in excess of one year. Mr. Kinneally said correct. Mark Apostolou and Neil both said they would think we would have to cap it if granted to that same time frame. Mark asked that a copy of the Resolution from Sea Girt be attached to our file so we are not finding ourselves as party defendants again. Geoff said so you want to mimic the language that is contained in the Borough of Sea Girt's Resolution. Mark said he has no opposition to also stating that should they wish to go beyond that date that a commensurate application be made to both Boards, I have no problem giving you that right but I don't want to exceed something that would put us in jeopardy. Mr. Kinneally said let's assume that we go through the year and Sea Girt has no problem in the interim to some sort of an amendment to that agreement approximately a year from now. I just ask any change is so minor a change that a public hearing would not be necessary. Geoff said

we have to tread very carefully here and he wants a copy of the Resolution given to the applicant's by Sea Girt and he will certainly frame any Resolution he would provide to this Board for adoption consistent with that Resolution. Mr. Kinneally said he will supply that tomorrow. Neil said when the year is up, possibly you could come back as Council without notice if Geoff has no problem with that, assuming there are no issues with the public of Sea Girt. Jim Kinneally said he would only do that if Sea Girt has signed off. Mark Apostolou made a motion to open the meeting to the public, seconded by Kevin Thompson, all in favor none opposed. There was no public participation. Mark Apostolou made a motion to close the public portion, seconded by Kevin Thompson, all in favor none opposed. Mark Apostolou said subject to the parameters enunciated in our original Resolution paragraphs 10 and 11, and specifically incorporating the conditions of the Resolution from Sea Girt he moves to approve the request, seconded by Mayor Ed Donovan.

Board Members Voting Yes:

Mayor Donovan, John Muly, Mark Apostolou, Mark Larkin, Kevin Thompson, Neil Hamilton

15-MINUTE PRESENTATION – Elsinger – 355 First Avenue West Side – Michael Henderson is the attorney representing the applicants. He was beginning to introduce the applicants but Geoff Cramer said if this is an informal hearing, without proper notice to the property owners and noticing no evidence can be heard. All the Board is going to listen to is a presentation, questions pertaining to procedure or the Board's apprehension in the situation you can certainly ask it. But, this Board will not be hearing testimony tonight. Michael said he will just present himself. His clients purchased the property in 2013, they operate a business in the area, Carlson's Corner and their application consists of a two-story addition with a covered rear porch, a raised deck, and an outdoor shower. Currently, there is no parking in the rear of the house; the parking is all in the front. The neighbor's to the north and south, their property extends closer to the rear yard than ours, so by adding this addition it would make this dwelling conform more closely with the neighborhood scheme. He had pictures which he will save for the actual hearing. He explained the two variances they need, building coverage and rear setback. He said they would be seeking a C-1 Variance due to the exceptional narrowness of the lot. Neil Hamilton stopped him and asked why he just didn't make a full application to the Board. Neil said you are not coming in and asking us if you are out of the ordinary for this, do we need to shrink this down to be more in compliance with the neighborhood. You are not asking that, you are giving us testimony to try to convince us as it would be in a formal hearing. I don't think that's why you are here. Michael said he did not want to put his clients in any peril, he suggested to them that they should seek an informal presentation. Neil said when you come back next time, you will probably see more than six members so everybody will get a chance to fully look at the application as well as do a site visit. We will take into consideration the character of the neighborhood. I think you need to proceed on with a full application. Michael Henderson said fair enough. Neil said you have two driveways in the front, I know they are pre-existing but we have passed a driveway Ordinance that will be part of one item on your denial. I think you need to move forward. Neil said to the Board members to hold onto their packets.

APPLICATION #04-2017 – Hall Family Trust – 155 First Avenue – Block: 177 – Lot: 33.03
– Zone: R-5 – John Giunco is the attorney representing the applicants, he is of the Law Firm Giordano, Halleran & Ciesla of Red Bank. He stated this is an application to seek 64%, where 60% is permitted for the half-story. The additional area is requested to provide attic storage where the project is located in a flood zone and does not allow basement storage. Mr. Cramer swore in Steve Carlidge, Shore Point Architecture, Al Yodakis, Board Engineer. The Board accepted Mr. Carlidge's credentials. Mr. Giordano said the only variance they are seeking is for the half story where they are proposing 64% where 60% is permitted. He stated the driveway will be 20-feet. Steve Carlidge was the first to testify. He is the architect for the addition and was also the architect for the house on the property now. Mr. Carlidge explained the half-story request and the reason why. He had floor plan which shows the half-story as proposed and also showing as it would look if it conformed to the Ordinance. Mr. Cramer marked that as Exhibit A-1. The point being that what they are proposing is here under the Ordinance is what we could build is an attic with a half story where the width of the area that was 5-feet, would be approximately 14-inches wide, verses what we are proposing which is the width of the 5-foot area in the attic which is shown in this section, the width which we have 5-feet in height would be 4-feet wide. What we are proposing is a half-story that is 64% of the area of the second floor where 60% is permitted. The reason we want to do this is very simple. We are in a flood zone, we have a garage on the first floor on one half of the house and on the other half of the house, and we have a crawl space. We don't have any storage at the lower level. The only place we have in the house for storage is the attic area and since it's the only storage available we'd like to just expand the attic area slightly to a point where it wouldn't be habitable space, but we would at least get enough room where somebody could access the attic for storage and the fact that there would be an air handler located in there. Council would be willing to stipulate that it would not be habitable. That's the entire application. They will not exceed the height limitations. There is no negative impact; it's consistent with the neighborhood. The gable we are talking about is in the rear of the house, it's considerably lower than the balance of the house. The benefit outweighs any detriment. You will not be able to see the gable at all from the front of the house. They reviewed Al Yodakis' report, they are revising the site plan to make driveway conforming, so that will be a non-issue. Mr. Giunco asked about the driveways on both sides of the house. Mr. Carlidge said he can address that, he showed the driveway they are proposing which will be 20-feet wide. There is a new curb cut to serve that driveway so two cars can access the garage. There is an existing curb cut to the north side which actually serves an existing driveway which runs down the side of this house to get to the rear yard and it serves the neighbor in Lot: 37 to the north, that's a shared arrangement. It's half on our client's lot and half on the neighbor's. The other driveway serves Lot: 31. Al said the way he reads the Ordinance that is a variance. Mark Apostolou said the TECK Committee suggested that there be a statement as there be no intention to provide stairs to the roof top deck. The design does not provide stairs to that deck. All of Al Yodakis' report was addressed and will be complied with. The utilities are underground. Geoff Cramer asked about the elevation at the bottom of the proposed interior pool. The bottom of the proposed pool is more than 2-feet above the BFE. Neil had a statement before opening to the public. He said he appreciates you taking a conforming lot and putting this kind of investment on First Avenue, it's an addition to the Community and he appreciates the

efforts and the money that is being put forth there. His concern is this; we have worked hard on our half-story Ordinance over the years. He doesn't recall ever giving a variance for the half-story. As de minimus as this may be, to try to pick up storage of about roughly about 90-square feet, you have a pool, you have a huge, huge house. I understand the reasoning, you are in a flood zone, you can't store underneath the house. You still have a two car garage; you have a massive structure there. My thinking is we have never, this Board has given variance after variance for side yard, front yard, lot and building coverage, we have bent our back to accommodate folks to give them something to be a part of the community and have a house that is livable. But, when you take a conforming lot and you want to put a structure of this size on it, I would think that you need to make it comply. For us to start to violate and give a variance for the half-story I think this Board is going to make a bad move to do that, because once we do one, we're going to do more and now we are going to lose control and start to provide variances and expansion of structures throughout the Beach area which normally that's the area that needs the relief. Frankly, I don't see a hardship here, you have to cut down the size of the pool or somewhere else for storage without asking us for a variance for that half-story, I think it would be a bad move for this Board to approve this application and violating the half-story Ordinance and giving relief for it. Mr. Giordano said he appreciates Neil's comments, but they are not seeking a variance based on hardship. We tried to demonstrate because of the benefit for it, the property is in full conformance otherwise, it does meet all the requirements, this is something very de minimus, it is the Board's obligation as you know to evaluate each application on its own terms and merits. Kevin Thompson made a motion to open the meeting to the public, seconded by Mark Apostolou, all in favor none opposed. There was no public participation. Mark Apostolou made a motion to close the public portion, seconded by Kevin Thompson, all in favor none opposed. Mark Apostolou made a motion to approve the application subject to the constraints that the addition would not be habitable as it applies to the storage, he thinks the benefits outweigh the detriment. He knows that's a flood area, Kevin Thompson seconded the motion.

Board Members Voting Yes:

Mayor Ed Donovan, John Muly, Mark Apostolou, Mark Larkin, Kevin Thompson

Board Members Voting No:

Neil Hamilton

The Board called for a 5-minute recess.

Roll Call Following Recess:

Present:

Mayor Ed Donovan, John Muly, Mark Apostolou, Mark Larkin, Kevin Thompson, and Neil Hamilton

APPLICATION #05-2017 – Kehoe, Aaron and Cara Macksoud – 273 Beachfront, 272 First Avenue – Block: 181 – Lot: 11 – Zone: R-4 – Keith Henderson is the attorney representing the applicants. Mr. Cramer found the file to be in good order and accepted jurisdiction. Mr. Cramer swore in Aaron Kehoe, owner/applicant, Joe Fortunato, contractor and Kay Callaghan who is a neighbor. Aaron Kehoe was the first to testify. He said the purpose of this application is to legalize the 6-inches that they are too close to the setback regarding their pool. When they purchased this property there were two original Beach bungalows, a

front house and a back house. When they did the original inspections they noticed that the Beach side house had four bedrooms and in each bedroom were two double bunk beds and they were much smaller than the allotted sleeping space that was supposed to be in there. They notified the tenants that they had a lease that if they wanted to continue to lease under them as the new owners they would have to remove the beds and conform to the rental Code for a C/O, and also the noise Ordinance. As a result they cancelled the lease. The houses were damaged in Sandy. The Beach house had 7-feet of water in it and was condemned and was torn down shortly after Sandy, the First Avenue house had a decent amount of damage but was repaired enough for us to use it for the last summer season. They subsequently applied to this Board for permission to build two new dwellings and to obtain Variance relief in connection with those. Keith marked for the record Exhibit A-1, Resolution #19-2013 approval for that application. In connection with that approval Mr. Kehoe hired a contractor to build the dwellings. He had issues with the contractor after the work commenced; ultimately they had to part ways with him. There is pending litigation over construction defects. At the time they hired that contractor, he produced a pool subcontractor. His services were retained with the Kehoe's, and that contractor was Joseph Fortunato. They learned that there might be a problem with the location of the pool when they were trying to submit their as-built survey and apply for their final C/O. That is when they learned that the pool was 6-inches off on the south side at that time. When you look at the house from First Avenue you cannot see the pool. You cannot see the pool from the Boardwalk either. There are fences on both sides of the pool, those fences are about 8-feet on north side and 10-feet on the south side, and they are Code compliant fences, 48-inch safety fences from the face of the deck. They have never rented the properties, the Beach side house is for him and his family and the Street side house was built for his wife's parents. When they purchased the property the real estate taxes were around \$16,000 and now they are \$30,000. The homes were not built by Terrence Hegel as stated in the Resolution, he was too busy after Sandy and this was not a typical modular project so they hired someone else who is the builder they had problems with. Keith asked if there were issues with the pilings to support the pool. Mr. Fortunato was next to testify as to the pilings, upon his first arrival on the job the pilings were already installed and they were cut to the existing grade, basically to make it easier to access the front house. They were actually cut about 36-inches too low, causing the pool floor to end up being around 36-inches thick of concrete with a double row of steel in it. When he arrived on the job the pilings were not in the correct location, the pilings within the footprint were correct, there were four pilings marking out the outside four corners of the pool and those were in the wrong location. He didn't find that out until the as-built survey was done. The surveyor was hired by the original contractor DiBiasi. He relied upon that work; normally he does the layout of the pilings and cut them himself. There are special circumstances which make it difficult to correct the error right now. Due to the fact that there is a tremendous amount of concrete and steel in that wall. They would have to provide a mechanical device as opposed to jack hammering it by hand, they would have to either come through the access road in the off-season from the Beachfront and go down the side property, or actually crane it in from First Avenue, over the house and inside the actual pool structure. He builds pools for a living, he doesn't believe the six inches is noticeable, his father started the company in 1993 and he has been working with him since he was a little kid, this is all he has ever done. Neil asked the contractor if when he came in to take over the job and the

pilings were there, did you feel at that point in time those pilings weren't in the correct location. Mr. Fortunato said yes, that's correct, some of the outside pilings were outside the footprint of the pool so he actually had to build a haunch around it so the pool structure sat on top of it. Neil said at that point, why wouldn't you have brought that to light to someone? Mr. Fortunato said there was already an Engineered drawing for the original piling plan, so he brought his personal Engineer in and we re-submitted the piling plan to the Township to accommodate it. Mark Apostolou asked if you saw the pilings were wrong, why didn't your Engineer pick up on it. Mr. Fortunato said the only thing he had a problem with was the height for the pilings, the footprint of them being off maybe 8-inches or so, doesn't affect the integrity of the pool, so he didn't feel that it was such a big problem. Keith said it didn't affect the location of the pool. Mr. Fortunato said no, not the location of the pool. Mark said but you said they were outside the footprint, that means it wasn't in accordance with what the original specs were, correct? Mr. Fortunato said I am saying recently there were four corners that were maybe adjacent to the pool, maybe 6-8-inches, but there were still 20 pilings inside the footprint of the pool. Mark said he is missing this, Neil said he is too. Mark said if you saw something outside of what you believed it to be correct, and you brought an Engineer in, how he didn't pick up that the outline was outside of that is beyond us. Mr. Fortunato said he used his judgment that if it was that big of a problem, we probably would have driven another set of piles in but I guess the fact that he was a physical Engineer, he didn't see a problem with it. Mark said he's not here to testify, but maybe he figured he could get away with 6-inches I don't know, that's the problem. Neil said maybe he figured what's 6 or 8-inches. Keith Henderson said is it your opinion Mr. Fortunato that to remove that it would be a tremendous expense. He answered it would be and it could also cause damage to the house as well, the vibration and the existing house as well. They would have to use a machine to break that up. Geoff Cramer said we are talking about a minimum required side yard setback of 10-feet, its 9 1/2-feet on one side, what's the side yard setback on the other side. Neil said it's more than 10-feet, the applicant said its 12-feet on the one side and 9-feet, 6-inches on the other, 10-feet on the south. Mr. Kehoe said we were one of the first house reconstructed after Sandy, and they wanted us to use the pilings, my Beachfront house sits on 70 pilings, the First Avenue house sits on 30 pilings and the pool sits on 20 pilings. Subsequent houses have been built with less pilings than mine, I don't know in what order the pilings were put in but we are talking about 35-foot, 12-inches in diameter the vibration of pounding them into the ground, they could have put them in properly and after the vibration of the hundreds of pilings that were put into that property shifted slightly in the sand, again that's my speculation. I wasn't even at the property at the time the pilings were being driven into the ground. Next, Kay Callahan testified, Keith asked her if she was the neighbor to the south and she said yes. She was there when it was a group rental and she is happy that is over with, they all thought they died and went to Heaven. She doesn't have any objection to the pool remaining as it is built; she doesn't notice it at all. She doesn't understand what the objection is, and she also doesn't understand with all the inspectors that have come around it wasn't found before the end of it. She is very happy since the applicant purchased the property, the neighborhood had significantly improved. She is happy with the homes that are built; it was a disaster before they came. She is the neighbor to the side where the pool is deficient in setback. It doesn't affect her at all. Keith Henderson summed up his testimony. He said this is a C-2 Variance. These are much safer structures than what was

there before. Mark Apostolou made a motion to open the meeting to the public, seconded by Mayor Donovan, all in favor none opposed.

Audience Members Coming Forward:

John O'Grady – 265 Beachfront – He said the house they purchased should have been taken down after Storm Sandy because it was laying on the ground, but it wasn't. For years we had group rentals. Was there a mistake made? Yes, the pool was 6-inches over, but this neighborhood you can almost open your window and shake hands with your neighbor in the other window. If we don't worry about our houses being 4 ½ and 5-feet away, I don't think we should worry about having a pool with this setback, so I think you should approve the application.

Mark Apostolou made a motion to close the public portion, seconded by Mayor Donovan, all in favor none opposed.

Kevin Thompson made a motion to approve the application as amended as we have heard tonight, seconded by Mark Larkin.

Board Members Voting Yes:

Mayor Ed Donovan, John Muly, Mark Apostolou, conditionally as he believes this is a hardship but we have to draw the line, Mark Larkin, Kevin Thompson, and Neil Hamilton.

Neil addressed the Board saying there will be a Master Plan presentation before this Board. Ed Donovan said the Planner will be making a presentation to the Council on April 17, 2017. The Special Meeting of April 18th was supposed to be for the Cemetery. Al as of today has not heard from the Engineer for the Cemetery. Neil said the drainage report for the cemetery needs to be in possession of the Planning Board 10 days prior to meeting with them, it needs to be available to the public, to the objector's attorney, to the Board members. Mark Apostolou said if everything is not here by this Friday, he wants to deem the application not sufficient and we cannot hold that meeting. Al said Mr. Middleton may object, he has told Al he is going to hire an Engineer who is going to double check everything Al does and double check all the calculations of Mr. Carpenter. Mark requested we amend our By-Laws that we can correspond by e-mail. Mary's last letter was sent by Certified and Regular mail, the regular mail was returned, the Certified was signed for. Kevin asked Geoff is he could call the attorney for the applicants. Al said he would act as a completeness officer. Neil said we can't have that meeting on April 18th then. Neil said we will then have to have them appear at the Special Meeting on May 16th. Al asked who is deeming the applications complete. Mary said in the past she has always had someone but doesn't have anyone but herself deeming them complete now. Al will be deeming applications complete or not complete from now on. Mary said RALCO did bring in the rest of the money and he is waiting to hear the date of a meeting. Al said we could meet conditionally and we may have to carry them if the application is incomplete. Mark Apostolou made a motion to appoint Al as the compliance person in this particular case to certify the completeness of the file. Neil said the cemetery has to come at night because of the neighbors who need to be able to attend. The Board agreed the Planner for the Master Plan can come before the Board at 6PM and the Cemetery will appear at 7PM at the May 16, 2017 meeting.

Mark Apostolou made a motion to move the May 16, 2017 Special meeting to 7PM as opposed to 4PM. All in favor none opposed.

Kevin Thompson made a motion to open the meeting to the public, seconded by Mayor Donovan, all in favor none opposed.

Audience Members Coming Forward:

Mark Fended – 32A Taylor Avenue – he doesn't think you should use e-mail for anything, he has 30 years experience in the software industry and it's not a guarantee delivery method.

Kevin Thompson made a motion to close the public portion of the meeting, seconded by Mayor Donovan, all in favor none opposed.

MEETING ADJOURNED AT 8:30PM

Respectfully Submitted,

**Mary C. Salerno
Planning Board Secretary**