**The Manasquan Planning Board held a Regular Meeting on September 6, 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 Ed Donovan, Robert Young, Greg Love, Mark Apostolou, Peter Ragan,**

**Mark Larkin, Leonard Sullivan, Kevin Thompson, John Burke, and Neil Hamilton.**

**Board Members Absent:**

**Councilman James Walsh, John Muly, and Barbara Ilaria (Mayor’s Alternate)**

**Professionals Present:**

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

**Geoffrey S. Cramer – Planning Board Attorney**

**Geoff Cramer read the Open Public Meetings Statement.**

**Neil said we have a minor adjustment to our Agenda this evening we are going to introduce Resolution #21-2017, to the adoption of the Master Plan which was heard at a Special Meeting on July 25, 2017. Borough Attorney Mark Kitrick is here to present that Resolution.**

**Mark Kitrick said the purpose of his being here today is to present the Resolution adopting the Master Plan Re-Examination Report which is subject of a hearing on July 25, 2017. He asked that the Board take action on that Resolution and accept this and adopt this Resolution and he will explain what the next steps are. Mark Apostolou made a motion to approve the Resolution, seconded by Kevin Thompson.**

**Board Members voting yes to approve:**

**Mayor Ed Donovan, John Muly, Robert Young, Greg Love, Mark Apostolou, Leonard Sullivan, Kevin Thompson, Peter Ragan, Kevin Thompson, Robert Young, Mark Larkin, John Burke and Neil Hamilton.**

**Neil said for the public, the second reading on this final approval will be on Tuesday, September 26, 2017 at 4PM.**

**Mark Apostolou offered a Resolution to offer a Special Meeting on September 26, 2017, seconded by John Burke, all in favor none opposed.**

**Mark Kitrick said the next step will be for him to come on September 26, 2017 for the purposes of assuring that it’s consistent with the Master Plan. Those Ordinances will be set for a hearing at the next available Council Meeting for a public hearing.**

**Approval of Minutes of July 11, 2017 – Regular Meeting, John Burke made a motion to approve seconded by Bob Young, all in favor none opposed.**

**The second set of Minutes, July 25, 2017 that will be the Master Plan meeting, those minutes need to be revised, we have some corrections to make on page 6, so if everyone will give back those sets of minutes to Mary, they will be resubmitted to you when the corrections are made.**

**Vouchers – Lenny said they are all in order except for the top one to be reviewed, we don’t seem to have enough money to cover that, he made a motion to approve seconded by John Burke.**

**Board members voting yes to approve vouchers:**

**Mayor Ed Donovan, Robert Young, Greg Love, Mark Apostolou, Peter Ragan, Mark Larkin, Leonard Sullivan, Kevin Thompson, John Burke and Neil Hamilton.**

**RESOLUTION #07-2017 - Sheeran, De – 418 Main Street – Block: 150 – Lot: 5 – Zone: R-3 – Mark Apostolou made a motion to memorialize, seconded by Kevin Thompson, all in favor none opposed.**

**RESOLUTION #16-2017 – 360 River Place – Block: 127 – Lot: 3, 4 – Zone: R-2 – Kevin Thompson made a motion to memorialize, seconded by Robert Young, all in favor none opposed.**

**RESOLUTION #13-2017 – Politto, Betty Jean – 514 E Main Street – Block: 169.06 – Lot: 53 – Zone: R-3 – Kevin Thompson made a motion to memorialize, seconded by Mark Apostolou, all in favor none opposed.**

**APPLICATION #17-2017 – Kelly, Melissa – 235 Second Avenue – Block: 177 – Lot: 9 – Zone: R-3 – Keith Henderson represents someone who was an objector to this application, this was passed and approved in 2016. Thereafter some material was submitted to his office, the Zoning Officer and the Planning Board indicating the Survey that they relied upon had omitted the 99-year lease. The applicant and the objector have worked out their differences. The 5-foot setback required in the Ordinance will be measured from the lease line and not from the property line. That setback will be 9-feet off the property line and 5-feet off the lease line. The second issue was there was at one point a walkway which went to the back of the property and serviced access to the shower behind the house. The shower will be re-configured so that the neighbor will not have to walk across our property in order to access those showers and they will have access from the southerly boundary.**

**Neil said this application was for a front deck, Keith said the whole front of the house was being extended and there was virtually no setback on his side of the property. Neil told Mrs. Kelly that all work had to be straightened out that has already been built on the property. Geoff found the file to be in good order and accepted jurisdiction. Keith had some items to be marked as evidence, Exhibit O-1 – Copy of the 99-year lease filed with the County, Exhibit O-2 – Copy of the Survey which shows the lease, Exhibit O-3 – two photographs before Sandy, Exhibit O-4 what’s there now. Keith said the people next door to Ms. Kelly the McConnell’s are the objectors, Ms. Kelly is the applicant. Keith said the settlement was agreed to earlier today by the objector and applicant. There was a prior Resolution #41-2016 that was memorialized by the Board. Keith said the plans have been modified to reflect the agreement with the objector. Geoff swore in Ms. Kelly, owner/applicant, and Brian Hollis, architect who modified the plan last week. This will show in the Resolution. Mark Apostolou asked Geoff is he was satisfied with the Lease Agreement and he said yes he was. Greg Love asked if there was off-street parking shown on the plan. The answer was no, the lot is very deep and the house sits far back. Kevin Thompson made a motion to approve, seconded by John Burke.**

**Roll Call accepting the proposed changes:**

**Mayor Ed Donovan, Robert Young, Greg Love, Mark Apostolou, Peter Ragan, Mark Apostolou, Leonard Sullivan, Mark Larkin, Kevin Thompson, John Burke and Neil Hamilton.**

**APPLICATION #32-2016 - McLaughlin, John – 18, 18 ½ Ocean Avenue – Block: 162 – Lot: 5 – Zone: R-2 – Carried from July 11, 2017 – Minor Subdivision – Ed Liston is the attorney representing the objector. Mr. Liston said let the record show it’s 7:22 he is on the clock for his 50-minutes. Neil said he wants to put an end to this tonight, I hope you don’t go to 50 minutes, if you do I want to poll this board to get a consensus of their feeling is so we don’t have to carry this again. Mr. Liston had Andrew Thomas, Planner called as his first witness. Mr. Liston had Exhibits to be marked into evidence. O-1, pictures of the present condition of the rear house on the subject property. O-2 through O-7 is six photographs taken by his client Mr. Gableman probably sometime in early July before the last hearing. Geoff Cramer swore in Mr. Andrew Thomas. Mr. McLaughlin, attorney for the McLaughlin’s interrupted stating the pictures O-2 through O-7 entered into evidence Mr. Liston indicated they reflect the present condition of the property, however those photographs were taken before and do not necessarily reflect the present condition of the property. Mr. Liston said that’s true, I’m sure there was a clean-up before the meeting. Mr. Thomas, Planner gave his credentials and they were accepted by the Board. He was present at the last meeting. In preparation for his testimony here tonight he visited the site; he reviewed the subdivision plan submitted to the Board, the application, notice, zoning application and the Planning Board file. He gave testimony of his findings. Mr. Liston said two houses on one lot are no longer permitted and Mr. Thomas said the Ordinance states that. The Borough passed an Ordinance #21-18-12 in August 2012 prohibited Flag Lots and that’s under Section 35-11.4. He read the Ordinance. It is his belief that this does constitute a Flag Lot and he re read the definition. Next, he and Mr. Liston addressed the easement issues. There is a 10-foot easement between the McLaughlin and Gableman’s properties. This would create more intensity onto the easement on the Gableman property. There is a concrete patio and walkway on the side of existing lot 5.01 that has extended into the driveway. In addition the existing house on lot 5.01 is only about a foot or so from the easement itself. The last issue as indicated by the Fire Official’s review letter dated 10/03/2016 says there has to be a Fire Lane created for this if approved because of concern with access to the rear lot. It is not typical to have a Fire Lane Signage in a residential neighborhood due to the creation of a new lot. It really becomes a potential enforcement issue for the Borough. It is his belief that the subdivision doesn’t benefit the Municipality it only benefits the applicant. There is no hardship. The property being subdivided is just over 10,000 square feet, subdividing the land into two lots would be out of character for the north side of Ocean Avenue. Lots are typically larger on this side of the road. Mr. Liston said let’s talk about how this measures up with both C and D Variance. Mr. Thomas said you need a Use Variance for the creation of a Flag Lot and the rear lot does not abut a public street. Mr. Thomas gave extensive testimony as to why he believes the Board should not grant the request by the applicant. Mr. Liston next addressed abandonment. Mr. McLaughlin said he opposed and that is a conclusion. Mr. Cramer said abandonment facts and the conclusion of the intent to abandon; he doesn’t see any intention to abandon this property. Mr. Liston said he wants Mr. Thomas to address what your Ordinance says about abandonment. He then asked Mr. Thomas to talk about what the Manasquan Ordinance Section 35-26.1 provides. Mr. Thomas gave his testimony as to whether or not this property has been abandoned. Board members asking questions were Mark Apostolou. Next, Mr. McLaughlin cross examined Mr. Thomas, he asked if he would agree that at the present time there are two principal structures on the lot. Mr. Thomas said yes. Mr. McLaughlin said if the application were granted there would be two separate lots each with a principal use. So, that existing variance condition would be eliminated would it not? Mr. Thomas said yes, but you would be creating another variance condition. Are you also aware of the fact that the dwelling in the rear is a two-family dwelling. Mr. Thomas said that is the applicant’s testimony. Can you explain to me your testimony tonight that changes a two-family residence into a single-family residence would result in more traffic. Mr. Thomas said you are taking down what appears to be an abandoned Use and subdividing the lot, the building in the back hasn’t been used in 10-years. Mr. McLaughlin asked what his basis for stating that is. Mr. Thomas said my recollection is that your Engineer testified to that. Do you recall the testimony of the applicant’s daughter? Mr. Thomas said yes. Do you recall that Jill McLaughlin testified that up until Hurricane Sandy the rear dwelling was used by the family, and occasionally by others? Mr. McLaughlin asked Mr. Thomas if he examine all the properties in the neighborhood with respect to how many accesses, lots without frontages there might be on that block between N. Potter and the bridge. Mr. Thomas said no, what he did was and looked at the area to see how the lots were laid out. I know in some instances there are easements. Mr. McLaughlin said so you have no basis for disagreement with Mr. Fitcher’s testimony that there are in fact nine lots without frontage, between N Potter and the Bridge. Mr. Thomas said he didn’t look at that. Mr. McLaughlin asked him if he looked at how many access easements existed in that stretch of Ocean Avenue. Mr. Thomas said no. Mr. McLaughlin said nothing further. Mr. Liston said his next witness is Betsy Orner, she was sworn in by Mr. Cramer. She lives at 26 Ocean Avenue, the Gableman’s are in between her house and the McLaughlin’s. Mr. Liston asked her if she recalled the last time the rear house on the McLaughlin property was last occupied. She didn’t know dates, but long before Storm Sandy. Mr. Liston asked her if the house had been in the present condition before Sandy and she answered yes. She is a year round occupant at her home. She had a conversation with Joan McLaughlin before Sandy about the hole in the roof. Mr. McLaughlin asked if she was aware of what building permits were obtained by the McLaughlin’s and she said no. Next, Mr. Liston called Donna Gableman who was sworn in by Mr. Cramer. Mr. Liston asked if she did an OPRA request to seek any building permits or rental C/O’s on this rear property. Mrs. Gableman said yes, she did two OPRA requests asking for any and all correspondence between the Code Enforcement Office and 18 and 18 ½ Ocean Avenue. She got no permits; there was no stop work order, there was nothing. She said she asked for all correspondence between Code Enforcement and 18 and 18 ½ Ocean Avenue and there was nothing. She said her husband and she have had a house in Manasquan for about 15 years; this is her third property in Manasquan. They moved here permanently two years ago. They built their dream home. They didn’t care for the house that was next door, but we did not make any mention or anything to our neighbors about it. We rented it for about maybe two years before we started to build. Coincidentally when she was at the Code Enforcement building about a year ago in July she went to the Code Enforcement to ask about a particular Variance that she had received a letter for regarding Betsy’s property with Keith Henderson. While she was there she asked Frank DiRoma by the way what’s the deal with a house that’s in disrepair, nothing is going on there. He told her, Mr. McLaughlin objected. Mr. Liston said you asked him about the property. Mrs. Gableman said she asked him what’s the rule in Manasquan regarding this kind of property not being taken care of. Mr. Liston said as a result do you know if he took any enforcement after. She said he said he was going to. Mr. McLaughlin said that is here say. Mrs. Gableman said I can tell you he didn’t do anything in writing because I asked for everything in writing in my OPRA request subsequent to that discussion we had. Obviously they must have had a conversation because they started making things happen on the property to the point where the McLaughlin’s were on the Agenda for a Planning Board meeting to present their subdivision or whatever. I don’t know what they were asking for. It was only when somebody went to the Town and asked how this could be for a Variance when nobody in the neighborhood got a letter. It was then subsequently taken off, that was with a different lawyer, and his name was Timothy something. As of November they were already working on something, and then they retained Keith Henderson and started in March. Mr. Liston asked her if in their view would this if approved have an effect on your detriment of life and the value of the property you just put money into. Mrs. Gableman said without a shadow of a doubt. Ocean Avenue is a very busy Street, if this property were to be subdivided there is only a small bit of property behind the first house for parking, and a small bit of property in the back. The fact of the matter is the house has been like this before Sandy and only the McLaughlins come part time. There is only light traffic on the easement part time. She said absolutely not would she agree to a fire lane. Mr. McLaughlin he had Exhibit A-9 a Stop Work order dated 10/17/2011. He had a packet of permits and inspections from the Borough of Manasquan pertaining to the property as Exhibit A-10. Mr. Liston objected to the marking of a whole packet, Mr. McLaughlin said they run from October 2011 to November 2014 and there are earlier ones as far back as 1987 and 1995. Mrs. Gableman asked what the date of the stop work order was and Mr. Cramer said October 17, 2011. Mr. McLaughlin said he would just pick a few, he marked an electric sub code, technical section dated 10/17/2011 as Exhibit A-10, Mr. McLaughlin said I didn’t know your client was going to testify that my client didn’t tell the truth. Next he had a Construction permit application dated 5/14/1997 entered as Exhibit A-11. Mr. McLaughlin asked Mrs. Gableman if she recognized a letter marked as Exhibit A-6, a letter she wrote requesting to purchase the property in the rear from them. She answered yes; she expressed her interest in purchasing the property. Mr. Liston asked Mrs. Gableman if there was a response to the letter, she said Mrs. McLaughlin called her and said she was not interested but said she was interested in purchasing the easement. Mr. Hamilton said at the last meeting we opened to the public, does anyone here have any other comments they want to add. Mr. Hamilton said Thomas Stiles and Betsy Orner spoke last time.**

**Audience Members Coming Forward:**

**Tom Bateman – 43 Pearce Court – As to rebuilding the house affected by Sandy he knows the Town has been extraordinarily generous with the amount of time for people to re-build their homes. We have many, many homes in Town that have not been re-built for many reasons.**

**Mr. McLaughlin gave his final summation. He thinks the application is relatively simple, making a great deal of common sense and planning sense and should be granted. We have an existing property with two principal structures; one of the dwellings is a two-family. So, we have really three dwelling units on one piece of property. What the McLaughlins are trying to do is clean that up, create two lots that exceed 5,000 square-feet which is the minimum lot size in the zone. Demolishing the structure in the rear which everyone agrees including the McLaughlin’s is an eyesore and needs to be taken care of. But rather than being a two-family house, they are seeking to demolish it and construct a conforming, brand new single-family structure. He submits that Mr. Fitscher’s testimony was very thorough, analyzed the neighborhood showing this is not unusual in Manasquan it’s not unusual in this neighborhood. The issue of abandonment is really red herring. There has never been intent to abandon. The fact that all these permits have been issued right up to Sandy that process has been going on and has only ceased since then, clearly indicates that there was no intent to abandon this non-conforming structure and this non-conforming use. Also, there wasn’t a requirement that the easement be marked as a fire lane; it was merely a suggestion by the Fire Official. One that we would certainly consent to but we understand that the neighbors would have to consent to that also. The application is designed to resolve all of the issues that the objectors are complaining about. We understand it’s not attractive, we understand it should be. We understand you built a very large attractive new home. We want to build a very nice, single-family, conforming home in the back and reduce the use of this property from three dwelling units to two dwelling units. I think we have met every single standard set forth in the Land Use Law. In fact it’s up to the Board to decide whether or not this is a Flag Lot, it’s a question of how you interpret that definition, we asked for a Variance if we need one. If it’s the Boards interpretation that we don’t if you agree with the interpretation of our Planner, than we don’t need that Variance. We think that everything that has been presented to you in terms of the testimony on behalf of the applicant and the testimony of Mr. Fitschter who was extremely thorough and extremely detailed justify each and every item of relief that we would require, including that Use Variance. We would ask the Board to grant the application and permit the McLaughlin’s to improve the property for the benefit of their property but also for the neighboring properties.**

**Mr. Liston gave his testimony. He said these people aren’t Sandy victims; this house was in disrepair prior to Sandy. It was not being used, they started to do some repair work and then after Sandy they abandoned the whole situation. The abandonment issue is not a red herring by any means. Because if they were not to get this variance and not be allowed to basically fracture your Zoning Law which as Mr. Thomas indicated, it’s rare where a Town specifically outlaws Flag Lots and I don’t remember what Mr. Fitscher said I just remembered him testifying this isn’t a Flag Lot I had to scratch my head and read the definition over and over again because it fits the definition to a T, it’s almost like somebody looked at the applicant’s map and described it, because the description would match your Flag Lot description. This Town made a decision years ago that they don’t want Flag Lots anymore. This is exactly what they are trying to do. They are trying to cash in an overcrowded neighborhood; they have not made any attempt to prove that they are entitled to the variances they are seeking. Don’t think they can start rebuilding that again because they can’t, without coming to this Board and getting a variance specifically to rebuild. The time has come on Ocean Avenue for these old double bungalow situations that have existed since the 20’s to be over with. You are going to create a dangerous precedent you are going to in essence ignore your Zoning Ordinance. I don’t see how you could possibly grant these variances. Neil asked the Board for their thoughts. John Burke said he was on the Planning Board when they made the recommendation to the Town about no more Flag Lots and as far as he can see or remember this does fit that Flag Lot to a T as the attorney said. Neil said he disagrees with the concept that it is a Flag Lot. What’s the intention of the Board? Mark Apostolou said he constitutes it a Flag Lot. He is concerned over the lack of Gableman’s consent to a Fire Lane easement. He doesn’t even think abandonment is for us to consider, if we deny this application he thinks the McLaughlin’s have the right to make an application to reconstruct as it existed. Neil said in reference to abandonment he thinks our prior policy has been as long as they maintain the water and sewer services whether the house is rehabbed or occupied. Unless they have changed their thinking on that since I’ve been out of the upstairs office. Neil said his comment is frankly he doesn’t think either of you in his thinking presented this as a positive application for us and the Community. I don’t think you have presented enough factual evidence that this application should go down. Let me finish. My final comment is the fact that neither of you have convinced me one way, positive nor negative of this, my only gut feeling is I don’t think it’s a good application. I’m not convinced, it is what it is and I can’t support the subdivision. On my gut feeling not what the professionals provided as positive or negative. Greg Love said he has to go along with Neil, Judge McLaughlin said they were going to come together and share the property with family and so they want a subdivision. There are other more thoughtful and ideas you could come up with. If you have to reconstruct what is already there, that’s fine. Bob Young said you had stated maybe tear down the rear structure and expanding the property facing Ocean Avenue he thinks that was an excellent suggestion. Lenny Sullivan said the house that is back there could be rehabbed as a single-family. Their daughter said they wanted to make it a single family so they could all be together, in my opinion you can rehab the house to be a single family so I’m not in favor of the application either. Neil Hamilton made a motion that the application be denied and remain status quo, seconded by Robert Young.**

**Board Members voting to deny the application:**

**Mayor Ed Donovan, Robert Young, Greg Love, Mark Apostolou, Peter Ragan,**

**Mark Larkin, Leonard Sullivan, Kevin Thompson, John Burke, and Neil Hamilton.**

**APPLICATION DENIED**

**Mark Apostolou made a motion to adjourn the meeting, seconded by Kevin Thompson, all in favor none opposed.**

**MEETING ADJOURNED AT 8:38PM**

**Respectfully Submitted,**

**Mary C. Salerno**

**Planning Board Secretary**