

Sea Bright, New Jersey
Planning Board Minutes
September 22, 2009
8:00 P.M.

Chairman Cunningham called the meeting to order and requested those present to join him in the salute to the Flag.

The Borough of Sea Bright, in compliance with the "Open Public Meetings Act" has advertised the date; time and location of this meeting in the *Courier* on January 16, 2009 filed it with the Clerk, and posted a notice on the bulletin board in the Borough Office.

ROLL CALL:

PRESENT: Boardmembers, Cashmore, Clauer, Cunningham, DeSio, Fernandes, McBride, Murphy, Torcivia (Alt. #1) Smith (Alt. #2) (arrived at 8:02) Attorney Higgins, Board Secretary Branagan
ABSENT: Long, Nott

MINUTES:

A. Boardmember Clauer made a motion approving the August 11, 2009 Planning Board Minutes. Second by Boardmember Torcivia and approved upon the following roll call vote.

Ayes: Cashmore, Clauer, Cunningham, McBride, Murphy, Torcivia

Nays: None

Absent: Nott

Abstain: Fernandes

1. MEMORIALIZATION OF RESOLUTION:

Boardmember Clauer introduced a motion approving the following resolution:

**NAVESINK PARTNERS, LLC
1410 Ocean Avenue
Block 3 Lot9
B-2 Zone
Preliminary/Final Major Site Plan**

**RESOLUTION OF THE SEA BRIGHT PLANNING BOARD
GRANTING PRELIMINARY/FINAL MAJOR SITE PLAN APPROVAL
RE: CHARLES McQUILLAN, NAVESINK PARTNERS, LLC
1410 OCEAN AVENUE
Block 3, Lot 9**

WHEREAS, Charles McQuillan, Navesink Partners, LLC has applied to the Unified Planning Board for preliminary and final

site plan approval for boat storage and marina operations regarding the premises commonly known as 410 Ocean Avenue, Block 3, Lots 7, 8 and 9, Sea Bright, New Jersey; and

WHEREAS, Navesink Partners, LLC is the owner of the premises commonly known as 410 Ocean Avenue, Block 3, Lots 7, 8 and BPC Marina LLC is the owner of lot 9; and

WHEREAS, the applicant has provided due notice to the public and all surrounding properties as required by law, has caused notice to be published in the official newspaper in accordance with N.J.S.A. 40:55D-1 et seq., this Board gaining jurisdiction therein and public hearings having been held on this matter at a regular board meetings of March 24, 2009, April 28, 2009, and August 11, 2009, at which time all persons having an interest in said application were given an opportunity to be heard; and

WHEREAS, the applicant appeared and marked into evidence certain documents including the following:

- A-1** Jurisdictional Packet;
- A-2** aerial view of the subject property;
- A-3** preliminary/ final major site plan prepared by L.G.A. Engineering dated 3-10-09;
- A-4** photograph of restaurant and boat racks;
- A-5** dredging maintenance plan;
- A-6** aerial photograph with rendering;
- A-7** new revised title sheet dated 4-14-09;
- A-8** updated geometry plan, sheet 3, dated 4-14-09;
- A-9** update of A-3, updated to 4-14-09;
- A-10** photograph of Arnette home depicting trees on Arnette property;
- A-11** Navesink Marina project area prepared by Birdsall Engineering aerial view/lot coverage; and

A-12 revised plans by L.G.A. Engineering revised to 6-24-09, 5 pages.

WHEREAS, the Board introduced the following:

B-1 aerial photograph;

B-2 aerial photograph;

B-3 letter from David Hoder dated 3-19-09;

B-4 marked up plan and cover sheet by Tom Hiege, Fire Marshall;

B-5 letter from David Hoder dated 4-20-09;

B-6 letter from David Hoder dated 7-27-09;and

B-7 Fire Marshall letter.

Certain objectors appeared and entered the following into evidence:

O-1 aerial photograph;

O-2 Catanese photograph of current conditions;

O-3 photograph of current conditions;

O-4 photograph dated approximately 2003;

O-5 photograph of current conditions; and

O-6 photograph of current conditions;

WHEREAS, members of the public were given the opportunity to be heard regarding the application; and

WHEREAS, the Board having considered the evidence presented made the following findings:

1. The owner of the property is Navesink Partners, LLC.

2. The applicant initially appeared before the Board for improvements to Block 3, Lots 7, 8 and 9, including overflow parking, boat storage, bpat storage racks, landscaping,

lighting, as well as a 3,600 square foot maintenance garage/machine shop addition on Lot 8.

3. At the August 11, 2009, meeting the applicant amended its proposal to limit same to improvements to Lot 9, in order to utilize that previously residential lot for boat storage and marina operations.

Lots 7 and 8 were excluded from the application, including the proposed improvements thereto, which included the maintenance garage/machine shop, overflow parking, additional boat storage and boat racks.

4. The applicant's final proposal is for boat storage and marina operations on Lot 9 only. The applicant requires variances from Ordinance Section 130-40.F, the parking or storage of boats, vehicles or other equipment in any front yard set back, side yard set back, or rear yard set back. The applicant is proposing storage of boats within all set backs. The applicant further requires a variance from Ordinance Section 130-59.B (3), which prohibits the storage of boats out of doors closer than fifteen (15') feet to any adjoining residential property line and rack storage is prohibited. The applicant is proposing boat storage within fifteen (15') feet of residential properties.

5. The applicant **STIPULATED** that it would place some type of edge treatment such as rope fence along the length of the fifteen (15') foot buffer in order to prevent encroachment upon or damage to the buffer by the maneuvering of boats or marina operations.

6. The applicant **STIPULATED** that it would lower the proposed light poles and comply with Ordinance Section 130-58.L (1).

7. The applicant presented testimony from Sean Torpe, a licensed engineer in the State of New Jersey, employed by L.G.A. Engineering. Mr. Torpe explained the revisions to the plan which removed all proposed improvements on Lots 7 and 8, as well as the pavement for part of Lot 9. He explained that the revised plans for Lot 9 show the proposed storage of boats and marina operation within the illustrated Sheet No. 3. He advised that the applicant would continue to provide landscaping as stated at the earlier hearings so as to allow for the fifteen (15') foot buffer.

8. In response to concerns from the neighbors that the tree heights as proposed in the landscaping plan could block their view of the river, the applicant **STIPULATED** that they would rearrange the plantings so the view would not be obstructed. The applicant will taper the landscaping from the proposed willow oak towards the river to shorter trees so that the view of the river will not be obstructed.

9. Mr. Torpe **STIPULATED** on behalf of the applicant that the light poles would be lowered to twenty-five (25') feet and that shields facing north would be installed per Engineer Hoder's letter. For security reasons, lights will be on from dusk to dawn. Mr. Torpe testified that there would be no light spillage onto the yacht harbor property.

Mr. Torpe **STIPULATED** that the plans would be revised to coincide with the current conditions as recommended by Mr. Hoder's letter, Item No. 2 of general comments.

10. The testimony was that the boats will be stored up to the buffer line on the side, and up to the bulkhead in the rear and as currently stored on Lot 8 right up to the property line in the front.

11. The applicant **STIPULATED** that they will amend and revise their plan to show the fire lanes to the satisfaction of both the Fire Marshall and Engineer Hoder.

12. The applicant testified that the storage of boats is currently within the setbacks, especially in the front portion of the property and they will continue the operation as is currently exists on Lot 8. There is an existing line of railroad ties in the front which they will continue as part of the delineation of the property line. The Board found that there is an existing buffer between the property line, the sidewalk, and the street. The yacht harbor side will have a fifteen (15') foot buffer with no activity occurring within that buffer.

13. The Board found that the proposed uses are permitted for this property and adjacent to the existing marina use. This is a good use for riverfront property. The Board found that the applicant had changed its plans in response to concerns and objections by the neighbors. Currently on Lot 8 the boats are stored right up to the railroad tie which is the property line in the front. This will be continued over onto Lot 9 and the applicant will delineate that line by extending the railroad

ties.

14. The Board found that the applicant had met the concerns of the neighbors and, other than the storage of boats within the setbacks, met all other Borough requirements. The Board found that the storage of boats within the setbacks, as well as the requested variance for rack storage, could be granted without any negative impact on the neighborhood and that same would not substantially impair the intent and purpose of the zone plan in light of the fact that it was a permitted use in the zone and consistent with the existing uses.

15. The Board found that this site was particularly suited to the intended use for marina operations. The site is on the riverfront and would be an expansion of the neighboring marina use. The bulk variances requested will not substantially impair the intent and purpose of the zone plan and ordinance and will not result in any detriment to the public good. Additionally, the variances requested will not negatively impact the surrounding neighborhood as the applicant has amended his plans so as to minimize any affect on the neighbors. The use of the property for marina use and operation is one contemplated within this zone district. As to the storage of boats within the setbacks, the Board did find that as to the front of the property, the storage had been up to the property line on Lot 8, with no negative impact. The Board again noted that there is considerable distance between the property line, the sidewalk and the curb. To the rear is the river and there will be no negative impact by storing boats right up to the bulkhead.

16. The Board further finds that any and all variances can be granted without substantial detriment to the public good for a permitted in the zone, the improvements are in general compliance with the ordinances and will minimize any affect on the neighboring properties.

NOW, THEREFORE BE IT RESOLVED, that the Unified Planning Board of the Borough of Sea Bright, based upon the findings of fact set forth herein that the variances requested and the site plan be granted subject to the following conditions:

1. The applicant shall obtain the approval of all necessary and appropriate governmental agencies and comply with all governmental regulations except those specifically waived or modified in this resolution.

2. The applicant shall submit proof of payment of all real

estate taxes applicable to the property and payment of all outstanding and future fees and escrow charges, posting of all performance guarantees in connection with the review of this application prior to and subsequent to the approval of this application.

3. The applicant shall comply with all building, FEMA and fire code including, but not limited to, entrances and exits, if applicable.

4. The applicant will submit revised plans to include the following:

(a) showing the location of the boat storage on Ocean Avenue to match the line of boat storage on Lot 8;

(b) applicant will install a rope fence or similar delineation marker subject to the approval of the Fire Marshall along the length of the fifteen (15') foot buffer in order to prevent encroachment upon or damage to the buffer by the maneuvering of boats or the marina operations;

(c) the existing chain link fence will remain as it is not part of this application;

(d) the applicants have agreed to comment No. 2 under "landscaping and lighting" and letter of David Hoder dated July 7, 2009 by lowering light poles to twenty-five (25') feet and installing shields to prevent any spillage to the yacht harbor property. This shall be subject to the engineer's approval;

(e) the plans will be revised to show fire lanes to the satisfaction of both the Fire Marshall and the Board Engineer; and

(f) the landscaping will be amended starting from the willow oak trees and tapering down so that the trees will be shorter as they approach the river to insure that there will not be an obstruction of the view of the river to the neighboring yacht harbor property.

5. There will be no activity within the fifteen (15') foot buffer adjacent to the yacht harbor property.

6. The Applicant shall be bound by all representations made in testimony before the Board as set forth in the minutes of the hearing on the date referred to above.

7. The Applicant shall provide four (4) copies of the revised plans to the Board's secretary.

BE IT FURTHER RESOLVED, that this Resolution memorializes the action taken by the Unified Planning Board, at its meeting of August 11, 1009.

BE IT FURTHER RESOLVED that the Board Secretary is hereby authorized and directed to cause a notice of this Resolution to be published in the official newspaper of the Borough of Sea Bright at the applicant's expense.

BE IT FURTHER RESOLVED that the Board Secretary is hereby authorized and directed to cause a certified copy of this Resolution to be sent to the applicant's attorney, the Borough Clerk, the Engineer and the Tax Assessor and to make same available to all other interested parties.

Second by Boardmember McBride and approved upon the following roll call vote:

Ayes: Cashmore, Clauer, Cunningham, McBride, Murphy, Torcivia

NAYS: None

ABSTAIN: None

ABSENT: Nott

Boardmembers Cashmore and DeSio were recused because they lived within 200 feet of the applicant's property. Boardmembers Fernandes and Murphy were recused because a portion of the property was subject to a use variance. No other members of the board had a conflict with the application or potential witnesses.

- Exhibit A-1 Jurisdictional Packet
- Exhibit A-2 Application
- Exhibit A-3 Architectural Plans by James Monteforte Architectural Studio dated August 20, 2009
- Exhibit B-1 James Kennedy Consulting Engineers, LLC completeness letter dated September 16, 2009
- Exhibit B-2 James Kennedy Consulting Engineers, LLC engineering review dated September 21, 2009
- Exhibit B-3 **Anthony Condoruis** architectural plans dated September 28, 2006.

Attorney Hirsch said that in his legal memorandum to the Board states that the applicant is not increasing the intensity of the

use and this is not a non-conforming structure and it is permitted and not prohibited by ordinance. The amenities being added does not increase the occupancy of the building or the size of any banquet. There is no expansion of the use that is not permitted.

Attorney Hirsch cited *Puleio v. North Brunswick Twp. Bd of Adj.* that dealt with a use variance granted for a two family home. Case law states that if there is pre-existing non-conforming use on a lot and subdivides making the main lot smaller that is deemed an expansion of the pre-existing non-conforming use. This case was approved by use variance. Because they did not receive five votes required they went to court and the court made the distinction showing a difference between an existing non-conforming use and use established by use variance. The use variance case had the elements of permitted use and non-conforming use and the court found that five votes were not required but would have been needed if it was deemed a pre-existing non-conforming use. He said that this could be interpreted broader as it establishes a pre-existing non-conforming use in a use variance. A use variance has the elements of a permitted use.

Attorney Hirsch said that the Doctrine of Res Judicata is for cases that are tried through the courts and is applicable through zoning/planning boards. The same case can not be reargued. This is a discretionary call by the Board based on the facts presented that the second application on the same property is the same and whether changes to the application is sufficient to deem it a new application or changes in the surrounding circumstances since the first decision for it to be a new application. This has to be based on the evidenced presented to the Board.

Attorney Higgins said that the Board can not make a determination based on the documents submitted and they would need to hear testimony and facts for a decision as to whether the application is substantively different from the prior application and different enough that it rises to the level of a new application.

Attorney Leckstein said that the fact that there is a claim that there is no increase in the number of people because there is no increase to the banquet area is not the test of whether there is an expansion. *Puleio* is not upheld by Supreme Court decisions, which say that when you receive a use variance you create a non-conforming use. As to the res judicata, part of the application is identical it involves an outside deck where people could

create noise and the Appellate Division said to zero in on the negative criteria and the Board ruled that an intrusion into the neighborhood. He said that the outside deck rules res judicata which was already ruled by the Board.

Attorney Hirsch said that the leading case of Russel v. Tenafly which is cited by everyone dealing with res judicata is a case dealing with construction of a single family home. The first application was denied regarding a side yard setback and the second application was for the same house and the setback was increased by five feet. The Board deemed it not res judicata and the court upheld it. If it is a question about noise clearly what the Appellate Division focused on was the same that the minority of the Board did as well and denied. The Court did not make any findings just did not overrule the Board's findings.

Attorney Leckstein said that increasing a setback is not the same as installing a deck, which would increase outside noise which was already decided by the Board. He said that the whole application does not create res judicata.

Engineer Kennedy said that they received a revised survey to fix the parking issue. The survey is missing a key map, which shows what surrounds the property regarding lighting, noise etc. The survey was provided in 2006 and customarily we look for an eighteen month old survey so there could have been or not have been changes since 2006. We received a narrative from Mr. Hirsch that there would not be an increase in traffic. We have not received a certification that not taxes or assessments for local improvements or sewer utility charges are due or delinquent. A copy of the application to the County Planning Board and/or the NJDOT should be submitted if required. An aerial would also be useful to this application.

Attorney Hirsch said that a key map and an aerial map would be supplied. The application does not increase occupancy or more traffic. The taxes have been paid and they will submit a certificate. Monmouth County Planning Board is not involved because the application does not involve a county road or facilities but they are willing to submit to the County to prove that they do not have jurisdiction. Testimony will prove that there is no new accesses permit to NJDOT because there is no increase in occupancy, the structure, and no intensity to occupancy or traffic and no new access permit is required. He requested waivers to be granted.

Attorney Higgins said that the Board agreed for a submission of

an aerial map by the applicant. The Board agreed that the Attorney Hirsch's narrative regarding traffic was sufficed for this application. The Board agreed to the Board's Secretary verbal received from the Tax Collector that taxes and sewer charges were not due. The prior application was not subject to Monmouth County or NJDOT approval and the Board did not request for them to submit applications. The Board requested an updated survey with a key map and Attorney Hirsch said that they would comply.

James Monteforte, architect was sworn in by Attorney Higgins. He said proposing a new lobby for the facility, ADA handicapped accessible elevator and the small area of the storage would be for elevator equipment. The existing bridal suite would be moved to the back facing the ocean. The application is not increasing the banquet facility. The lobby would be separated from the banquet facility for fire reasons. The deck would give the ability to bring people into the building for cocktail parties. The addition on the north side is an existing structure. The prior application included a proposal to expand the second floor to the south and to include the enclosure of the outside deck. It also included the number of tables and occupancy and this application does not include an increase of occupancy on the second floor. This application is for ancillary uses. The prior application included various changes to the banquet area, increasing the size of the dance floor. This application is not proposing this change and the size remains unchanged.

Attorney Leckstein said that tables could be on the proposed deck which could be used all year long when the beach club is not operating. The 1992 variance says that it was permitting a banquet facility in conjunction with a beach club. He questioned Mr. Monteforte about the two-story addition being built on the sea wall. Mr. Monteforte said that the addition would be on pilings and not supported by the sea wall.

Attorney Leckstein asked Mr. Monteforte about the square footage in this application. Mr. Monteforte said that they would be adding 2,384 sf. and the deck is 1,171 sf. The square footage addition for the north end 894 sf and the south end is 1,671 sf and the deck was 781 sf which was proposed in the first application. Attorney Leckstein said that this application is much larger than the original application in terms of expansion.

Mr. Monteforte said that the lobby is to be a circulation area for people to enter the banquet and the restrooms.. The actual area for people to eat and dance will remain unchanged

Engineer Kennedy brought up issues involving sewer expansion, utility services, HVAC equipment, fire suppression system, noise emanating from the deck, design stair standards, B3 zone regarding a building between the sea wall and the Atlantic Ocean and to include public access.

Chairman Cunningham opened the meeting to the public at 10:08 p.m..

Ed Wheeler of Ocean Avenue asked if the square footage would be increased. Mr. Monteforte said that the square footage was smaller in this application compared to the previous one.

Janice DeMarco of 406 Ocean Avenue asked how people would get from the first floor deck to the elevator. Mr. Monteforte said that they would have to go through the beach club.

The public meeting was closed at 10:18 p.m.

The application would continue at the October 13, 2009 Planning/Zoning public hearing.

ADJOURNMENT:

There being no further business before the Planning Board. Boardmember Clauer made a motion to adjourn the meeting at 10:20 P.M. Second by Boardmember Torcivia and approved upon unanimous voice vote.

Respectfully Submitted,

Suzanne Branagan
Planning/Zoning Board Secretary