

REGULAR MEETING

The following are the minutes of the Land Use Review Board of the Borough of Ship Bottom, Ocean County, New Jersey, which was held in Borough Hall, 1621 Long Beach Blvd., Ship Bottom, New Jersey on October 17, 2018.

WORKSHOP MEETING

Chairman Cooper stated the following:

The workshop meeting of the Ship Bottom Land Use Review Board is now open. The time is 7:00 P.M. and the date is October 17, 2018. Upon completion of the Work Shop Meeting the regular meeting will convene. Both meetings meet all the criteria of the Open Public Meetings Act.

Chairman Cooper opened the regular meeting.

REGULAR MEETING

Chairman Cooper stated the following:

The Meeting of the Ship Bottom Land Use Review Board will come to order. The time is 7:02 P.M. and the date is October 17,2018. The time, date and location of this meeting is listed in Resolution 2018-A, which was published in the Asbury Park Press, the Press of Atlantic City and Beach Haven Times. This was also posted on the Bulletin Board in the Municipal Building.

The next regular meeting of Ship Bottom Land Use Review Board is scheduled for November 19, 2018.

The conduct of this meeting is being recorded so all testimony can be clearly heard. At the appropriate time, the meeting will open to the public for any questions and comments. Maximum time period allowed to present testimony, witnesses and other proofs are limited to one hour and may be extended only at the discretion of the board. The meeting will adjourn at 10:30 P.M. with no further testimony being taken unless otherwise ordered at the discretion of the Board. All electronic devices and mobile phones should be turned off at this time.

Will the secretary please call the roll.

Roll call of members: Councilman Butkus, Mr. Basile, Mr. Bishop, Mr. Dixon, Ms. Schmidt, Mr. Fenimore, Mr. Yankowski, Vice Chairman Tallon and Chairman Cooper, present. Councilman English and Mr. Hay, absent.

Also in attendance were the Board Attorney, Stuart D. Snyder, Esq., the Board Engineer/Planner, Frank J. Little, Jr., PE, PP, CME of Owen, Little and Associates and the Board Secretary, Sara Gresko.

CORRESPONDENCE:

The correspondence folder was passed around for all members to review.

MINUTES:

The minutes of the September 19, 2018 meeting were presented to the Board. On a motion by Vice Chairman Tallon, seconded by Ms. Schmidt, the minutes were approved as submitted.

Roll Call Vote: Mr. Bishop, Mr. Fenimore, Mr. Yankowski, Vice Chairman Tallon and Chairman Cooper, all aye.

OLD BUSINESS:

- (A) DOCKET NO. 17:10
DIANE AMBERG-BORSELLINO
136 E. 19TH STREET
BLOCK 46, LOT 2

Katharine Shackleton, Esq., representing the applicant wrote a letter requesting the application to be carried.

A motion to carry this application was made by Councilman Butkus and seconded by Mr. Bishop.

Roll Call Vote: Councilman Butkus, Mr. Bishop, Ms. Schmidt, Mr. Fenimore, Mr. Yankowski, Vice Chairman Tallon and Chairman Cooper, all aye. Mr. Dixon recused himself from the application.

Councilman Butkus excused himself from the meeting at 7:10 P.M. due to the nature of the application.

(B) DOCKET NO. 18:13
THE BALDWIN RESIDENCE
338-380 W. 8TH STREET
BLOCK 103, LOTS 3 & 6

James Raban Esq., representing the applicants, requesting to amend the site plan to include a tent and food truck on the roof, shuttle pathways and salon/spa.

The following were marked into evidence by Mr. Snyder:

- A-1 Application
- A-2 Amended Preliminary/Final Site Plans prepared by Scout and Caldwell Engineers, LLC
- A-3 Partial Roof Plan- West W/Roof Tent
- A-4 Inspirational rooftop tent
- A-5 Inspirational food truck
- A-6 Spa Area Floor Plan
- A-7 Hot Mess Studio/Hotel LBI, prepared by Michele Pelafas, Inc.
- A-8 Inspirational shuttle transportation
- B-1 Review letter prepared by Owen, Little & Associates
- A-9 Photo of proposed tent titled Hotel LBI Rooftop Garden Lounge

Christopher Vernon, applicant, sworn in for testimony. He explained the changes to the plan that he was requesting.

On a motion made by Mr. Dixon, seconded by Ms. Schmidt and all in favor vote, all aye, the public portion was open.

Donna Edwards, 10th Street, had concerns regarding the buffering between the valet parking area and her property.

Not recognizing anyone else from the public, on a motion made by Vice Chairman Tallon, seconded by Ms. Schmidt and all in favor vote, all aye, the public portion was closed.

Mr. Raban provided closing statements and discussion ensued amongst the Board.

A motion to carry this application for the roof tent and shuttle transportation was made by Mr. Basile and seconded by Mr. Dixon.

Roll Call Vote: Mr. Basile, Mr. Bishop, Mr. Dixon, Ms. Schmidt, Mr. Fenimore, Vice Chairman Tallon and Chairman Cooper, all aye.

A motion to approve this application for the food truck and salon/spa was made by Mr. Basile and seconded by Mr. Bishop.

Roll Call Vote: Mr. Basile, Mr. Bishop, Mr. Dixon, Ms. Schmidt, Mr. Fenimore, Vice Chairman Tallon and Chairman Cooper, all aye.

Chairman Cooper called for a 5-minute break at 8:15 P.M.

Chairman Cooper reopened the meeting at 8:20 P.M.

Councilman Butkus returned to the meeting at 8:20 P.M.

NEW BUSINESS:

- A. DOCKET NO. 18:14
ANTONIO MANFREDONIA
111 E 19TH STREET
BLOCK 56 LOT 17

Erik Leboeuf Esq., representing the applicant, requesting to demolish existing structure and construct a new single family dwelling.

The following were marked into evidence by Mr. Snyder:

- A-1 The Application
- A-2 Variance Plan, prepared by Nelke/Tyszka Land Surveyors, LLC
- A-3 Architectural Plans prepared by Craig W. Brearley
- B-1 Review letter prepared by Owen, Little & Associates

Craig Brearley, licensed Architect, sworn in for testimony.

John Manfredonia, licensed attorney in the state of NJ and son of property owner sworn in for testimony.

Board members had concerns with the two (2) foot side yard setbacks.

The applicant agreed to make amendments to the plan.

On a motion made by Councilman Butkus, seconded by Ms. Schmidt and all in favor vote, all aye, the public portion was open.

Charles Green, 109 East 19th Street, in support of application.

Not recognizing anyone else from the public, on a motion made by Ms. Schmidt, seconded by Mr. Bishop and all in favor vote, all aye, the public portion was closed.

Mr. Leboeuf provided closing statements and discussion ensued amongst the Board.

A motion to approve this application was made by Vice Chairman Tallon and seconded by Ms. Schmidt with the following conditions:

- Amended plan with side yard setbacks of 3 feet
- 6" overhang with gutters
- Curb waiver

Roll Call Vote: Councilman Butkus, Mr. Basile, Mr. Bishop, Mr. Dixon, Ms. Schmidt, Mr. Fenimore, Vice Chairman Tallon and Chairman Cooper, all aye.

- B. DOCKET NO. 18:15
ANTHONY & JOHN DIOGUARDI
200 W. 17TH STREET
BLOCK 59 LOT 7

Richard Visotcky Esq., representing the applicants, requesting to demolish existing structure and construct a new single family dwelling.

The following were marked into evidence by Mr. Snyder:

- A-1 The Application
- A-2 Survey Map, prepared by East Coast Engineering, Inc.
- A-3 Variance Plan, prepared by East Coast Engineering, Inc.
- A-4 Architectural Plans, five (5) pages, prepared by Adamson Riva & Lepley Architects, AIA
- B-1 Review letter prepared by Owen, Little & Associates
- A-5 Two (2) 5x7" colorized photos

Robert Harrington, professional engineer, sworn in for testimony.

Mr. Bishop had a questioned the lot elevation filling according to the new ordinance.

Scott Lepley, licensed architect, sworn in for testimony.

On a motion made by Mr. Dixon seconded by Councilman Butkus and all in favor vote, all aye, the public portion was open.

Not recognizing anyone from the public, on a motion made by Ms. Schmidt, seconded by Mr. Bishop and all in favor vote, the public portion was closed.

Mr. Visotcky provided closing statements and discussion ensued amongst the Board.

A motion to approve this application was made by Ms. Schmidt and seconded by Mr. Fenimore, with the condition to relocation the A/C platform to the back of the dwelling.

Roll Call Vote: Councilman Butkus, Mr. Basile, Mr. Bishop, Mr. Dixon, Ms. Schmidt, Mr. Fenimore, Vice Chairman Tallon and Chairman Cooper, all aye.

RESOLUTIONS:

- A. DOCKET NO. 18:06
BARRY & VALERIE LAYNE
328 W. 17TH STREET
BLOCK 60 LOT 9

A motion to approve this resolution was made by Vice Chairman Tallon and seconded by Mr. Bishop. It is as follows:

**RESOLUTION OF MEMORIALIZATION OF THE
LAND USE REVIEW BOARD OF THE BOROUGH OF SHIP BOTTOM
COUNTY OF OCEAN AND STATE OF NEW JERSEY
DOCKET NO. 18:06
SPECIAL REASON/D VARIANCE**

WHEREAS, Barry and Valerie Layne, with an address of 328 West 17th Street, have made application to the Land Use Board of the Borough of Ship Bottom proposing to construct a new two-story single family dwelling, which proposal requires a Special Reason/D Variance, as the proposed building height is 29 feet where 24 feet is the maximum permitted on a lot less than 4,000 square feet in area and 40 feet in width, as well as a variance for the number stories where two is proposed and one story is the maximum permitted on a lot less than 4,000 square feet and 40 feet in width and for variances for pre-existing conditions including an existing lot area of 3,500 square feet where 4,000 square feet is required and an existing lot width of 35 feet where 40 feet is required, and existing lot frontage of 35 feet where 40 feet is required;

WHEREAS, the Land Use Review Board considered the application at a public hearing first conducted on May 16, 2018, which application was carried for revisions to plans in accordance with comments and testimony at that meeting, and the application has been heard on September 19, 2018, with the applicant represented by Nicholas F. Talvacchia, Esquire, of the firm of Cooper, Levinson, Attorneys at Law, in Atlantic City, New Jersey. The Board marked into evidence exhibits as follows: the development application filed April 18, 2018, marked as Exhibit A-1; the variance plan prepared by Nelke, Tyszka marked as Exhibit A-2; the architectural plans of Michael Pagnotta marked as Exhibit A-3; a daytime rendering of the proposed house as designed, prepared by Michael Pagnotta marked as Exhibit A-4; a nighttime rendering of the proposed house, prepared by Michael Pagnotta marked as Exhibit A-5; homes of similar size and height as prepared by Michael Pagnotta marked as Exhibit A-6; and the engineering letter of Frank Little, the Borough Land Use Engineer, of Owen, Little & Associates, Inc., dated September 13, 2018, marked as Exhibit B-1.

WHEREAS, the matter was opened with a preamble of the attorney for the applicant, Nicholas F. Talvacchia, and the Board Engineer, Frank Little, was sworn in and accepted by the Board as an expert witness. Michael Pagnotta, the applicant's professional planner and architect was sworn in and accepted by the Board in his professional capacities as an expert witness.

WHEREAS, Michael Pagnotta testified at length as to the exhibits he prepared. Mr. Pagnotta testified that after the May 2018 hearing, the plans for the property were substantially redrawn to eliminate side yard setback variances, and to decrease the requested height of the two-story structure. The new plans now allow for a 15 foot side yard setback, 5 feet on one side and 10 feet on the other, a 15 foot front yard setback, which will allow for a two-car garage and perhaps two more parking spaces on the applicant's property and not on the Borough right of way. Mr. Pagnotta testified that the house will be built to all flood requirements and all codes and that the present structure as it exists is in a dilapidated state. Mr. Pagnotta also testified that coverage has been decreased from the existing 37.7% coverage with the house that presently exists to 31.4% coverage, where 35% coverage is the maximum allowed. Mr. Pagnotta testified also that the prior presentation in May of 2018 requested more lot coverage, which was reduced down to the 31.4% coverage, now proposed.

WHEREAS, Mr. Pagnotta testified that he believed this house as proposed was more conforming with existing houses in the neighborhood that the design of this house would allow for more storage and living space in the house by removing the encroachment from the side yard and making the structure somewhat taller.

WHEREAS, there was substantial testimony from Mr. Pagnotta as to houses in adjoining areas, and he testified in his opinion he believes it will be similar to other houses. He opined that this house as presented would be an aesthetic improvement to the community, it would be an improvement because of the lesser lot coverage, it would be an improvement because of the increased parking on the owner's lot, that the side yard setbacks would be compliant with the code, that pushing the building back would be more aesthetically pleasing, that the house would be constructed to flood and hurricane standards, and the construction of a two-story home matches the trend and development in the area around this structure.

WHEREAS, Mr. Pagnotta testified, in his professional opinion, that he did not see any negative impact to the community or the Borough of Ship Bottom, that the zone allows for this height if the lot were 40 feet instead of the 35 feet in width and were 4,000 square feet instead of the 3,500 square feet, and that he feels that the applicant by proposing this design, compensates a smaller house with conforming side and front yard setbacks but requesting a slightly higher height than would be allowed.

WHEREAS, Mr. Pagnotta further testified that the house was reconfigured to provide five (5) more feet of side yard setback to provide a ten (10) yard setback for the neighbors who complained previously at the May 2018 hearing. He further testified the air conditioner would be at the back of the house, and the garage would have an eight (8) foot ceiling.

WHEREAS, the matter was then opened to the public and a number of members of the public presented concerns as follows:

1. The first member of the public was Michael Gobbo of 322 West 17th Street, Ship Bottom, New Jersey, was sworn in and testified, advised the Land Use Board that he is an attorney. Mr. Gobbo feels that there is no good reason to grant a variance, that this is a 20% increase variance to height and is double the permitted size. This is a 100% increase to living space as opposed to the prior existing building.
2. Mr. Gobbo further testified that he was concerned about the tree in the center of the lot and what will happen to the tree. He is concerned that the pavers against the tree would damage the roots. The tree contains squirrels and birds. Mr. Gobbo wants to have a house constructed on this lot with only one living level. He explained that there are other one-story homes with one-story living level and doesn't agree to the variance request for this height with a 35 foot wide lot. He further opined that the house is a disgrace and should be condemned. He explained his belief that the property can be used to construct a home to meet all building codes without going to a second story. The house should be conforming to height and reconfigured so that it would require a side yard setback variance instead of a height setback variance. He testified that he lives next door to the house.
3. Eileen Middleton of 336 East 36th Street, Ship Bottom, New Jersey, was sworn in testified that her family has owned the property where she resides for 70 years. She has requested multiple variances for her lot, which has only two (2) bedrooms. She was told she could build a two-story house with a substandard lot. She believes that the applicants' proposed two-story house will be a benefit to the community. She believes the house has not been lived in since the 1990s. She further believes that the house as proposed meets all requirements except for

the height and it will look like other houses in the area and needs only one variance.

4. Mary Egan, with an address of 1715-1719 Bay Terrace, Ship Bottom, New Jersey, was sworn in and testified that she needed a variance for her lot and the neighbors supported her. She would like to see the applicants become her neighbors and believes the house as presented in the conceptual plan will be beautiful.

5. Donna Bradley of 325 West 17th Street, Ship Bottom, New Jersey, was sworn in and testified that other towns raised the height requirement for buildings after Super Storm Sandy. She stated that she believes many homes in the neighborhood have been raised. She is in favor of granting the variance as the house as existing is dilapidated. She wants this new house as presented to be constructed.

6. William Middleton of 336 West 17th Street, Ship Bottom, New Jersey, was sworn in and testified that his parents have lived here since 1935. He testified that the variances should be granted. He further testified that it was his opinion that other towns changed the laws for heights since Super Storm Sandy since the houses now have to be constructed on pilings. He testified that the houses on both sides are higher than the applicants' present house and that raising the house will conform to houses on either side. He further testified that there are new houses on substandard lots that are two stories. Further, reducing the lot coverage, moving the air conditioner and the setbacks will all be compliant with five (5) more feet of side yard setback to the neighbor. He believes that the variance for height should be granted. Lastly, he testified that the tree ruined the sidewalk and pipes and that the tree can be saved by moving the driveway.

7. Gertrude Haughey, with an address of 334 West 17th Street, Ship Bottom, New Jersey, was sworn in and testified that she applied for a variance application because of similar issues years ago.

8. Barbara Krzyzkowski, with an address 307 West 17th Street, Ship Bottom, New Jersey, was sworn in and testified that she believes that the proposed house is a beautiful home, that the house that exists on the site now should be condemned, and the variance and permits should be for need not wants.

9. Susan Gobbo of 322 West 17th Street, Ship Bottom, New Jersey, was sworn in and testified that at the May 2018 hearing, she attempted to present a list of 25 neighbors who did not want this granted. She was advised at the September meeting that she could not present such a list since the neighbors that she alleged objected to this application because they are not there to be cross examined. She further testified that the Buyer is a Realtor and that the applicants should have known the height limitations prior to purchasing the property. She feels that this proposed application is a detriment to the public and out of character to the neighborhood.

10. Rose Marie Sprouls, with an address of 219 West 18th Street, Ship Bottom, New Jersey, is a licensed Realtor, and has shown this property over the course of time. She was sworn in and testified that she hopes to see something done with the house and is in favor of this application.

11. Mr. Gobbo, again representing to the Board he is an attorney, spoke of concerns his client had with the applicant. These concerns, as expressed by her attorney Mr. Gobbo, were a repeat of the same concerns Mr. Gobbo expressed previously.

WHEREAS, at this point, the public portion was closed, and the applicants' attorney presented a summation. He represented that the applicants did not intend to remove the tree, it could potentially die, but that eventuality could happen even if there was a change with a different design. The Board questioned the side entrance to the property. The Board Engineer advised that the side entrance does not count towards the side yard variance.

WHEREAS, thereafter, a motion was made to approve the application. The Board member making this motion stated that it is his belief that this proposed design improves the neighborhood, it is in keeping with the character of the neighbor, there are other two-story houses, that this is a difference of five (5) feet, and the difference in height is not relevant.

WHEREAS, the motion was seconded, with the Board member stating that this was a great job in addressing the concerns of the neighbors raised during the first presentation in May 2018. He stated that the other variances that were requested at that time have been removed. He also requested that the Resolution require a deed restriction requirement that the porches remain open and are not closed in. The applicant concurred

that this will be an acceptable condition.

WHEREAS, there was discussion thereafter with a third Board member stating that he believes in the Ship Bottom Borough height variances. He further explained that even though he believes in the height variances, the garage and two-stories required in this project go to this height, and that the applicants reduced the footprint and eliminated the setbacks which were his concerns previously. He agreed that this application is preferable because it reduced the other variances.

WHEREAS, thereafter, roll call was taken, and six eligible members who were available, all voted in favor of granting this application.

WHEREAS, the Land Use Review Board of the Borough of Ship Bottom has determined that the relief requested by the applicants, Barry and Valerie Layne, 328 West 17th Street, Ship Bottom, New Jersey, should be granted and that the request to allow the new structure to be constructed in accordance with the plans and to the height of 29 feet where 24 is the maximum permitted on a lot of less than 4,000 square feet and an area of 40 square feet in width, is granted along with any other variances, without substantial detriment to the public good and without impairing the intent and purposes of the zoning ordinances of the Borough of Ship Bottom, as this house is in conformity with other houses in the area, and the applicants have reduced or eliminated the variances which were of such concern to the neighbors when this application was first presented at the May 2018 hearing.

NOW, THEREFORE, BE IT RESOLVED, by the Land Use Board of the Borough of Ship Bottom, that the application for construction of a new two-story family home at 328 West 17th Street, Ship Bottom, New Jersey, is approved, with the construction to be in accordance with the plans and drawings submitted, and that the Deed for the property contain a restriction against the enclosure of the porches as per the requirements of the Land Use Board in their deliberations.

BE IT FURTHER RESOLVED, that this approval is subject to and conditioned upon the applicants' compliance with all terms and conditions of the letter of the Board Engineer, Frank J. Little, Jr., P.E., P.P. and C.M.E., dated September 13, 2018, as entered in to evidence as Exhibit B-1.

BE IT FURTHER RESOLVED, that this approval is subject to and conditioned upon the approval of all outside governmental agencies, and that it shall be constructed with all building and fire and safety codes, as well as obtaining all outside agency approvals from any agency having jurisdiction over this development.

BE IT FURTHER RESOLVED, that this approval is subject to and conditioned upon the applicants' payment of all taxes and other assessments, as well as the applicants satisfying all fees and escrows as may be required.

BE IT FURTHER RESOLVED, that the applicants are required to comply with all ordinances of the Borough of Ship Bottom other than for the variances granted.

BE IT FURTHER RESOLVED, that the approval is subject to all conditions and representations made by the applicants and their witnesses and placed on the record under sworn testimony at the public hearing conducted on September 19, 2018, when this matter was considered.

BE IT FURTHER RESOLVED, that in the event that the Board determines that it relied on any statements of the applicant or their professionals, and those statements were false or incorrect, the Board may rescind this approval or return the matter to the Board for further consideration.

BE IT FURTHER RESOLVED, that this approval is conditioned upon Applicant's payment of all taxes, assessments, and escrow fees as required.

Roll Call: Mr. Bishop, Mr. Fenimore, Mr. Yankowski, Vice Chairman Tallon and Chairman Cooper, all aye.

BOARD BUSINESS

A motion by Vice Chairman Tallon and seconded by Ms. Schmidt the November 21st meeting was rescheduled to November 19th, 2018.

Roll Call Vote: Councilman Butkus, Mr. Basile, Mr. Bishop, Mr. Dixon, Ms. Schmidt, Mr. Fenimore, Mr. Yankowski, Vice Chairman Tallon and Chairman Cooper

ADJOURNMENT:

Motion by Vice Chairman Tallon seconded by Ms. Schmidt and an all aye vote,
Chairman Cooper adjourned the meeting at 9:20 P.M.

Sara Gresko, Secretary
Land Use Review Board