

**BRANT BEACH, NEW JERSEY  
MAY 12, 2010**

A Regular Public Meeting of the Land Use Board of the Township of Long Beach was held in the Court Room in the Administration Building, 6805 Long Beach Boulevard, Brant Beach, New Jersey on the above date.

The meeting was called to order at 7:00 P.M.

**Mrs. C.K. Sicheri, Board Attorney**, made the following announcement: "This is a regular meeting of the Long Beach Township Land Use Board, notice of which was duly posted on the Bulletin Board in the Municipal Clerk's office and advertised in the Beach Haven Times and Asbury Park Press and filed with the Municipal Clerk on or before January 1, 2010 as required by the Open Public Meeting Act."

Members of the Board present: **Mrs. V. E. Applegate, Commissioner R. H. Bayard, J. A. Leonetti, R. R. Monaco, Mayor's Designee, D.A. Southwick, R. S. VanBuren and J. C. Konnor presiding.**

Members of the Board absent: **Mrs. M. P. Cleary, Mayor J. H. Mancini and Mrs. L. J. Schnell.**

Alternate members of the Board present: **P. M. Moran and R. L. Jones.**

Alternate members of the Board absent: **Mrs. G. M. Harle and J. J. TERNYLA.**

Also present were the following: **Mrs. C.K. Sicheri, Esq., Board Attorney, Mrs. L. C. Krueger, Board Secretary and Mrs. B.M. Bielawne, Clerk.**

(Tape #470 - Side 1)

\* \* \* \* \*

Mrs. Sicheri gave a brief overview of the applications to be considered:

**Mr. Leonetti joined the Board.**

**1. #LUB-10-10: O'BRIEN (Block 8.03, Lot 14) 5 West Ohio Avenue, Dunes:** Mrs. Sicheri stated that the applicants were proposing to construct a swimming pool which required a bulk variance for minimum setback from the principle structure to the accessory structure.

**2. #LUB-9-10: KELLY (Block 7.09, Lot 5) West Maryland Avenue, Beach Haven Terrace:** Mrs. Sicheri stated that the applicant proposed to construct a fourteen foot wide



The Board discussed fencing and the location of the pool three feet from the porch. Mr. O'Brien noted that there was a railing around the porch.

**The Public Session was closed.**

The Board noted that because of the pool's scalloped edge, only two areas of the pool were three feet from the porch.

**Moran moved, seconded by VanBuren to approve the application as submitted conditioned upon the payment of taxes.** The following roll call vote was recorded: Applegate, Bayard, Konnor, Leonetti, Monaco, Southwick, VanBuren, Moran and Jones all voted **YES**.

\* \* \* \* \*

(2) #LUB-9-10 BEACH HAVEN TERRACE

**PAUL O. KELLY**

Applicant

**PAUL O. KELLY, ET. AL.**

Owners

Block 7.09, Lot 5

**Mr. Michael F. Floyd, Esquire with the firm of Archer & Greiner, P.C. represented the applicant and evidence was marked as follows:** Application and attachments, **#A-1**, Variance Map prepared by Horn, Tyson and Yoder, Inc., dated October 2, 2006 bearing the latest revision date of May 4, 2009, **#A-2**, two page architectural drawing prepared by Craig W. Brearley, A.I.A. dated April 30, 2009, **#A-3**, packet of six letters to the following adjoining property owners offering sale of subject property: 1. Joseph V Krzywicki, Jr. and Michelle M. Krzywicki, 2. Rosario L. Radich and Margart G. Radich, 3. F. & D. Almodovar and T. Balsamo, 4. Carl D. Tepper and Elyse R. Tepper, 5. Michele Papageorge, John and Anne E. Walsh, et. al., **#A-4**, and, Appraisal prepared by Robert W. Kirwan Appraisal, Inc. dated January 9, 2009 and three additional comparable sales, **#A-5**. Mr. Floyd noted that an additional exhibit of the plan of Beach Haven Terrace was submitted, marked **#A-6**. Mr. Floyd stated that the applicant had appeared before the Board on two different occasions, first for an eighteen foot wide house and secondly, a sixteen foot wide house. Mr. Floyd stated that the applicant now proposed a fourteen foot wide home with five and a half foot side yard setbacks, allowing for more light and air between structures.

**Mr. Lance B. Landgraf, Jr., P.P., A.I.C.P. with the firm of Marathon Engineering and Environmental Services, Inc. was sworn and qualified.** Mr. Landgraf described the existing undersized parcel. Mr. Landgraf submitted a 2007 aerial photograph from the DEP website of the property and the surrounding area, marked **#A-7**. Mr. Landgraf noted the surrounding development and the lack of vacant land around the parcel. Mr. Landgraf stated that the applicant was requesting bulk variances for lot area and width, side yard and combined side yard setbacks and distance between structures. Mr. Landgraf noted that the

proposed side yard setbacks of the subject property exceeded the neighboring adjacent side yard setbacks. He stated that that the property was an isolated lot and noted that he felt this was an exceptional situation which uniquely affected the property. He stated that a denial of the variance would deprive the applicant of a fair and reasonable use of the property. He noted that the assessed value was \$105, 000.00 which was not the fair market value. He noted that the fair market value was \$275,000.00 and that, or something near there, would be a reasonable offer to resolve the hardship. He addressed the positive and negative criteria.

**(Tape 470 – Side 2)**

**Mr. Craig Brearley, Architect** was sworn and described the proposed architectural plans to the Board. Mr. Brearley stated that the front elevation was designed to reduce the impact of the home on the lot. Mr. Brearley stated that the windows facing the side yard of the adjoining neighbors had been reduced in size. The Board discussed the proposed overhangs.

**Mr. James Brzozowski, P.E., P.P. with the firm of Horn, Tyson and Yoder, Inc.,** was sworn and described the zoning schedule of the variance map to the Board.

**Mr. Robert W. Kirwan, Appraiser of Manahawkin, NJ** was sworn and qualified. Mr. Kirwan stated that the beach area was his specialty. Mr. Kirwan stated that the appraisal was originally done over a year ago and that there continued to be no real comparable sales of this type, with the assumption that the lot had approvals as a single family building lot. Mr. Kirwan discussed recent sales and listings with the Board. Mr. Floyd submitted the assessed value of the property, marked **#A-8** and discussed market conditions. The Board questioned how the amount of the appraisal was derived.

**Mr. Marc Spielberg, Attorney represented Carl and Elyse Tepper, adjacent property owners to the west.** Mr. Spielberg questioned Mr. Kirwan regarding recent sales. Mr. Spielberg stated that he was not sure that the appraisal of \$275,000.00 properly reflected the value of the lot noting that Mr. Kirwan said that the property was worth significantly more than double the assessed value. Mr. Spielberg stated that if the applicant was asking for an unreasonable amount of money, than his position was that the applicant had not met the burden of showing that there was no other reasonable use of the property.

Mr. Floyd read the letter sent to the adjacent property owners into the record. Mr. Floyd noted that the Teppers had offered to purchase the property at the assessed value of \$105, 000.00.

**(Tape #471 – Side 3)**

Mr. Spielberg stated that he would like to see the proposed house cut back to thirteen feet and the two foot overhangs eliminated or limited to one foot. Mr. Floyd asked if the Teppers had obtained an appraiser and Mr. Spielberg replied that their appraiser was not able to appear due to medical problems.

**Ms. Tracy Balsamo of 25 West Maryland Avenue** was sworn and testified that she had concerns regarding fire safety.

**Mrs. Elyse Tepper, adjacent property owner** was sworn and testified that they had offered \$106,000.00 which was the assessment and what the applicant's taxes had been based on. Mrs. Tepper stated that they would be willing to pay more than \$106,000.00 for the property but not \$275,000.00.

**The Board took a five-minute recess.**

**Mr. Carl Tepper, adjacent property owner** was sworn and testified that they would be willing to pay \$125,000.00 for the adjacent property.

**The Public Session was closed.**

Mr. Kirwan summarized his testimony. Mr. Floyd noted that there had been a lack of comparable sales of vacant land but based on testimony the property was worth \$275,000.00 and that the Teppers offer of \$125,000.00 was unreasonable.

The Board noted that the biggest concern was the distance between structures and for fire safety, that every foot was important. They did not feel that it was unreasonable to ask for a home that was narrower. The Board felt that the appraisal may be high but noted that the appraised value would still be higher than the Teppers offer.

Mrs. Sicheri reviewed the Board's options.

The Board noted that the lot was encumbered by the neighboring properties each having a five foot side yard setback and discussed the proposed width of the house.

The Board discussed holding the application over.

Mr. Floyd stated that the applicant was willing to reduce the width of the home to thirteen feet. While the Board felt that the fair market value had not been properly established, they noted that the fair market value would still come in higher than the adjacent neighbors were willing to pay. The Board thought that a thirteen foot wide house was a good compromise. They noted that the overhangs were built of metal and were an aesthetic enhancement to the proposed home.

**(Tape #471 – Side 4)**

**Leonetti moved, seconded by Bayard to approve the application as amended to allow a thirteen foot wide structure with equal setbacks and that the overhangs be allowed to remain as designed.** The following roll call vote was recorded: Applegate, Bayard, Konnor, Leonetti, Monaco, Southwick, VanBuren, Moran and Jones all voted **YES**.

Under **New Business** the Board discussed a request from Mr. Raban regarding the Sink R Swim Application (**LUB-33-09PF**). Mr. Raban stated that the applicant would like to place more than four of the twenty-seven approved seats outside of the Jersey Girl Ice Cream Parlor. Mr. Raban stated that the Town had told them that they did not care where the seats

were located as long as they did not exceed twenty-seven but that they wanted the Board to know. Mr. Konnor noted that the seating was pending expansion of the ice cream parlor which had not been done. Mr. Raban stated that the way the Resolution was written permitted twenty-seven seats. Mrs. Sicheri read the Resolution into the record. Mrs. Sicheri stated that it was up to the Town to interpret the Resolution.

\* \* \* \* \*

The Board discussed proposed **Ordinance #10-20C** and directed the Secretary, by voice vote, to send a memo to the Commissioners that they had no comment regarding the Ordinance.

\* \* \* \* \*

The Board approved the payment of the Board Attorney's and Board Engineer's bills.

\* \* \* \* \*

The Board went into closed session to discuss pending litigation.

\* \* \* \* \*

The meeting was adjourned at 9:40 P.M.

---

**JEFFREY C. KONNOR**  
**VICE CHAIRMAN**