

**BRANT BEACH, NEW JERSEY
SEPTEMBER 14, 2010**

A Regular Public Meeting of the Land Use Board of the Township of Long Beach was held in the Multi-Purpose 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.

Mr. A.P. 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, Mrs. M. P. Cleary, J. A. Leonetti, D.A. Southwick, R. S. VanBuren and J. C. Konnor** presiding.

Members of the Board absent: **Commissioner R. H. Bayard, Mayor J. H. Mancini, R. R. Monaco, Mayor's Designee and Mrs. L. J. Schnell.**

Alternate members of the Board present: **J. J. Ternyila.**

Alternate members of the Board absent: **P. M. Moran, Mrs. G. M. Harle and R. L. Jones.**

Also present were the following: **Mr. A.P. Sicheri, Esq., Board Attorney, Mr. F.J. Little, Jr., P.E. P.P., Board Engineer, Mrs. L. C. Krueger, Board Secretary and Mrs. B.M. Bielawne, Clerk.**

(Tape #479 - Side 1)

* * * * *

Mr. Sicheri gave a brief overview of the application to be considered:

1. #LUB-21-09-A: ROTHENBERG (Block 1.85, Lot 2) 117 West Marshall Avenue, Holgate: The application was held over from the June 9, 2010 meeting. Mr. Sicheri stated that the Board would take testimony as to the negative criteria for a "C" variance. He noted that a revised architectural plan had been submitted as well a review letter from Mr. Little, Board Engineer.

* * * * *

Minutes of the meeting held August 11, 2010 were presented for approval. **Leonetti**

moved, seconded by **Konnor** for adoption. The following roll call vote was recorded: **Cleary, Konnor and Leonetti all voted YES.**

Vice Chairman Konnor listed the following **Resolutions of Memorialization:**

1. **#LUB-13-10: ESTATE OF LOIS HILGEMAN** – Resolution of Approval moved by **Leonetti** seconded by **Cleary**. The following roll call vote was recorded: **Cleary, Konnor and Leonetti all voted YES.**
2. **#LUB-14-10-PF: SPRAY BEACH YACHT CLUB** - Resolution of Approval moved by **Cleary** seconded by **Cleary**. The following roll call vote was recorded: **Cleary voted YES.**

* * * * *

Vice Chairman Konnor noted the following application to be considered:

(1) **#LUB-21-09-A** **HOLGATE**

LEONARD AND RANDI ROTHENBERG

Owners & Applicants

Block 1.85, Lot 2

Mr. James P. Rhatican, Esquire with the firm of Connell Foley, L.L.P. represented the applicants and additional evidence was marked as follows: revised architectural drawings prepared by Musgnug and Associates, Architects dated May 8, 2009 bearing the latest revision date of September 1, 2010, **#A-10**, and review letter to the Board by Frank J. Little, Jr., P.E. dated September 8, 2010, **#B-4**. Mr. Rhatican stated that the applicants had been before the Board for variances regarding ordinance section 205-21, for the construction of a single family home. Mr. Rhatican noted that the application was remanded to the Board on the sole issue of access to the proposed development site by fire and emergency vehicles. Mr. Rhatican stated that the site had received DEP and Army Corp. of Engineer's approval for the construction of a single family home and the filling of the lot associated with the home. Mr. Rhatican stated that the Board members had concerns at the prior meeting regarding fire safety issues and that a revised architectural plan indicating a fire suppression system and a five foot walkway on one side of the home had been submitted.

Mr. Rhatican called the following witnesses:

Mr. Robert Musgnug, Architect of Musgnug and Associates, Architects was sworn and described the revised plans to the Board. Mr. Musgnug stated that the plans reflected that the width of the building had been reduced to allow for a five foot wide raised walkway as well as a stair from the ground floor for access at the back of the building. Mr. Musgnug noted that a sprinkler plan as well as a mechanical room on the first floor to house a two tank fire sprinkler system had been added. Mr. Musgnug stated that the area that was allowed to be filled had been reconfigured to allow for the walkway.

The Board discussed the proposed parking and the elevation of the mechanical room with Mr. Musgnug.

Mr. Willis J. Flower, Esquire with Ford, Flower and Hasbrouck in Linwood, New Jersey represented the property owners of 114 W. Osborne Avenue cross-examined Mr. Musgnug regarding the proposed five foot walkway. Mr. Musgnug stated that the walkway was to access the stair in the rear of the building and to allow firefighters to stage a ladder.

Mr. Richard J. Shackleton, Esquire with the firm of Shackleton and Hazeltine, representing adjacent property owner Long Beach Township cross-examined Mr. Musgnug regarding the high tide line and exterior access to all sides of the proposed home. Mr. Shackleton noted that a walkway was not proposed for the westerly side of the building.

Mr. John J. Mallon, P.E., P.P. with the firm of Ernst, Ernst and Lissenden in Toms River, NJ was sworn and testified that there was a six inch water line servicing Osborn Avenue.

Mr. Flower cross-examined Mr. Mallon.

Mr. Shackleton cross-examined Mr. Mallon as to the high tide line.

Mr. Philip Sconyo, P.E., expert in fire protection engineering, was sworn and qualified. Mr. Rhatican submitted Mr. Sconyo's resume, marked #A-11. Mr. Sconyo described the proposed fire suppressant system. He noted that sprinkler heads were also proposed in the bathrooms and closets and that the design exceeded the industry standards for a residential dwelling. Mr. Sconyo stated that sprinklers could be installed on the outside of the building. Mr. Rhatican stated that the applicants would be willing to do so.

(Tape #479 – Side 2)

Mr. Sconyo explained the operation of the sprinkler system.

The Board discussed their concerns for safety during a high tide.

Mr. Flower cross-examined Mr. Sconyo regarding the operation and design of the sprinkler system. Mr. Sconyo noted that the system was self contained.

Mr. Shackleton cross-examined Mr. Sconyo.

(Tape #480 – Side 3)

Mr. Sconyo stated that he had not prepared a written report on the sprinkler head design. Mr. Sconyo stated that under state law the sprinkler system had to be kept activated.

Mr. Gerald Sweeney, Esquire and owner of 113 W. Osborn Avenue cross-examined Mr. Sconyo as to the operation of the sprinkler system.

Mr. Rhatican asked Mr. Sconyo if the fire department would be aware that the home

contained a sprinkler system and he replied yes.

The Board took a five minute recess.

Mr. Musgnug stated that the filled portion of the lot would be sixteen inches above the street level.

Mr. Joseph J. Reinhart, expert in fire fighting tactics and fire suppression, was sworn and testified that the walkway allowed for access to two sides of the structure as well as the stairs to the rear. Mr. Reinhart stated that the width of the walkway would be adequate for a ladder in case of fire and that a toe board would be placed along the edge of the walkway for a ladder to be footed.

Mr. Reinhart stated that he felt that the design of the home and the proposed fire suppression system negated any fire fighting challenges.

Mr. Flower cross-examined Mr. Reinhart regarding the event of a fire at the property and the adequacy of the proposed five foot walkway. The width of the driveway and access for fire trucks was discussed.

Mr. Shackleton cross-examined Mr. Reinhart. They discussed the availability of an aerial platform fire truck.

(Tape #480 – Side 4)

Mr. Shackleton called the following witnesses:

Lt. Paul Vereb, Traffic Safety Officer and Lieutenant in charge of dispatch and special details with the Long Beach Township Police Department was sworn and qualified as an expert in fire safety and as a first responder. Lt. Vereb stated that he thought that the subject property was unsafe for first responders in different types of emergencies because of flooding and the lot becoming impassable to access certain sections of the proposed home.

Mr. Rhatican cross-examined Lt. Vereb as to his training and experience. Lt. Vereb stated his concern with the sprinkler system suppressing a kitchen fire.

Deputy Chief Leslie A. Houston, Deputy Chief and Emergency Management Coordinator of Long Beach Township was sworn and qualified as an expert in fire safety, emergency management as well as a first aid responder. Deputy Chief Houston stated her concerns with medical emergencies and first aid responders responding to the site.

Mr. Rhatican cross-examined Deputy Chief Houston.

Mr. John Hillman, President of the Beach Haven Volunteer Fire Company was sworn and qualified as an expert in fire fighting and fire response. Mr. Hillman stated his concerns with reaching a number of sides of the property noting that the front was the only truly accessible side, due to the marsh.

Mr. Rhatican cross-examined Mr. Hillman regarding his training and the equipment the fire company used.

(Tape #481 – Side 5)

Mr. Flower called the following two witnesses:

Mr. David Stapinski owner of 114 W. Osborn Avenue was sworn and testified that his home was just to the east of the subject property and stated that the property frequently has water on it. Mr. Stapinski discussed the flooding of the subject property with Mr. Flower.

Mr. Rhatican cross-examined Mr. Stapinski.

Mr. Thomas J. Scangarello, Professional Planner was sworn and testified as to the bulk variances requested by the applicant. Mr. Scangarello addressed the negative criteria as well as the Township's Master Plan.

Mr. Rhatican cross-examined Mr. Scangarello.

Mr. Gerald Sweeney, Esquire and owner of 113 W. Osborn Avenue was sworn and submitted photographs of the subject property, marked **#O-2a through g**. Aerial photographs of the subject property were submitted and marked **O-3a and b**.

(Tape #481 – Side 6)

Mr. Sweeney also submitted a copy of Resolution #25-83 regarding Ordinance #83-12C, marked **#O-4** and minutes from the Governing Body's meeting dated July 8, 1983, marked **#O-5**. Mr. Sweeney stated that people had reason to believe that after the adoption of Ordinance 83-12C the character of the area would remain the same and that the wetlands would be preserved.

Mr. Rhatican cross-examined Mr. Sweeney.

Mr. Charles Henry of 110 W. Osborn Avenue was sworn and stated his concerns with debris causing a fire hazard.

Mr. Rhatican cross-examined Mr. Henry.

Ms. Elizabeth DellaTorre of 2802 West Avenue was sworn and submitted photographs taken over a period of time, marked **#O-6**.

The Public Session was closed.

Mr. Rhatican recalled Mr. Sconyo who stated that the mist system would suppress a grease fire.

Mr. Rhatican recalled Mr. Reinhart who agreed that given the design of the home and the

fire suppression system that there would not be a need to feed a fire hose up a ladder to the second floor but stated that it could be done if necessary.

Mr. Sicheri suggested that a written summation be submitted to the Board by each Counselor. The Board decided by voice vote to continue the application and hear the summations.

Mr. Shackleton stated that the Judge's main concern in remanding the application back to the Board was safety regarding fire, flood and for the occupants of the home. Mr. Shackleton noted that the representatives of the Long Beach Township Police Department and the President of the Beach Haven Volunteer Fire Company expressed significant concerns as to safety.

Mr. Flower stated that the applicants had not met the burden of proof on the negative criteria regarding the issues of safety, access and egress.

Mr. Rhatican stated that the issue was whether in the context of negative criteria, fire safety was an issue. Mr. Rhatican stated that the plans had been revised to accommodate some of the concerns of the Board and public. He noted that Mr. Reinhart had testified that the walkway was sufficient, not optimum, to accommodate a ladder to the second floor of the proposed home. He stated that there was a fire suppression system that would operate for twenty minutes on an internal water system avoiding the need for anyone to access the home through the marsh land. Mr. Rhatican stated that he felt that the case had been proven and asked that the variances be granted.

The Board felt that there was not a way anyone could traverse safely around the south and west side of the proposed home, because of the uneven ground of the wetlands that would not be filled. They felt that the five foot walkway on the easterly side was simply inadequate as it would allow just one fireman at a time access along the walkway. They noted that the proposal would create a hazardous condition and noted their concerns with a future owner not maintaining the sprinkler system.

Southwick moved, seconded by Applegate to deny the application. The following roll call vote was recorded: Applegate, Cleary, Konnor, Leonetti, Southwick, VanBuren and TERNYLA all voted **YES**.

* * * * *

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

* * * * *

The meeting was adjourned at 11:10 P.M.

JEFFREY C. KONNOR
VICE CHAIRMAN