

MINUTES
ISLAND HEIGHTS PLANNING BOARD – June 14, 2018

The regular meeting of the Island Heights Planning Board was called to order by Chairperson Noble at approximately 7pm. Following the flag salute roll call was taken and present were: Bill Noble, John Bendel, Joe Connors, Donald Roberts, Ellie Seibert, Bob Baxter, Terry Brady, Mike O'Donnell and Wendy Prior. Absent: Sean Asay, Karen Kier, Bob MacNeal, and Frank Wetta.

Chairperson Noble stated that there was a minor subdivision application on the agenda for Block 7, Lots 2 & 6. Mr. Brady swore in Richard Peter Tokarski, 504 Yew Dr., Brick, NJ 08724. Mr. Tokarski stated that he is an architect and gave further statement on his credentials and location of his office. Mr. Tokarski explained that he along with Keith were very interested in this house and had been watching it for over ten years. Mr. Tokarski found that it was going into auction; he looked at the survey and noted that it had two lots which meant that the grandfather clause of pre-existing lots was what made it a no brainer since he wanted to purchase the house. Part of intent was to renovate and keep the character of the house after split the lot off and use the sale proceeds to fund the renovation. Mr. Tokarski acquired it through auction and proceeded to go to the town who said they would need to come before the Board to split the lots. Apparently in the past according to Mr. O'Donnell's letter the Assessor combined the lots and started taxing them together. Mr. Tokarski stated that he is before the Board to potentially save a great piece of architecture. He along with Keith and Sandy Healy had visited the neighbors and the ones they spoke to did not have an issue with it once they explained their intent. He further stated originally they were going to fix the house and sell it except his partner and wife fell in love with it and want to move in.

Mr. Noble stated that he had a couple of questions one of which is that the applicant knows the history of house and would he please give that information to the board. Mr. Tokarski stated that he believes that it was built in 1903-1905 and the person who built the house was a renowned interior designer in Philadelphia whose wife was involved in Pennsylvania legislature and the architect was the same one who designed Wanamaker Hall. It would be easier and more cost effective to knock it down and build it new but as an architect Mr. Tokarski stated he could not do that.

Mr. Baxter asked what prevents you from renovating this house without coming before the Board. Mr. Tokarski replied that the house is elevated with a two car garage underneath along with the garage at the back of the property that is also a two car garage which is an overabundance of garages. He further stated that he understands that the Board does not take into consideration the financial aspect but the sale of the lot helps with the renovation of the house which is more expensive then it would be to knock down and start over again.

Mr. Baxter stated that again my question is there is nothing that prevents you from fixing this house, you do not need this application to fix the existing house which you stated you value so much you do not need this to do that. Mr. Tokarski stated that for his financial picture he needs the sale of the lot to fuel the renovation of the house.

Mr. Noble stated that if that is your intention if this is subdivided to sell the lot to pay for the renovations. Mr. Tokarski replied yes.

Mr. Baxter asked a question of Mr. Brady that it is confusing to him in the letter from Mr. O'Donnell, the current Borough Code is minimum lot size is 75'x100' but we have been very flexible on a 50'x100' pre-existing to allow people to knock a building down and rebuild and maybe get an extra variance or two for it because it is an existing lot. What they are attempting here in this subdivision is a second lot that would be 50'x93' as I read this application. Looking at these notes and it looks like the exception as I read this ordinance for "an existing subdivision to allow something smaller" but that assumes that something exists in that fashion. Mr. Baxter asked if we are not bound by this section because what they are asking for is not in existence. Mr. Brady stated that is correct what we are doing is creating a non-conformity. Mr. Baxter that it is creating a non-conforming lot if we accept this application. Mr. Brady said that the lot has sufficient depth and upon the subdivision the letter from Mr. O'Donnell points out there would be a difference in the depth of the lot. Mr. Brady said that the frontage is the frontage and the width is the width but the depth says here that the proposed lot 2 depth where 100' is required only 95' is proposed. Mr. Brady said that it would be creating a non-conforming because as it exists right now one lot it meets the requirements for depth. Once it is subdivided, lot 2 will not meet that dimension. Mr. Bendel stated nor will lot 6. Mr. O'Donnell stated that lot 6 will meet the length requirements but not the width.

Mr. Bendel asked if Mr. Tokarski owned the property. Mr. Tokarski said yes he and his brother own it.

Mr. Noble asked if application is approved when would you start the renovations. Mr. Tokarski replied that the architecture plans are done and into the town and would start right away. Mr. Noble asked about the new structure on lot 2. Mr. Tokarski said that he is not sure he would be building it that he has a footprint right now and the zoning ordinance would guide what type of house would be built there but intent is to sell the lot. Mr. Noble said you would sell the lot without a house on it. Mr. Tokarski said that is correct. Further discussion was held by Mr. Noble and Mr. Tokarski regarding the proposed structure on Lot 2.

Mr. Noble asked if they were also asking for a variance on footage for both lots. Mr. Tokarski said because of the length yes they are. Mr. Noble said you are asking to put the lots back to the way they were, do you know when they were done this way. Mr. Tokarski stated no just that right now it is one lot. Mr. Bendel asked about the proposed house that is within the footprint isn't there a garage immediate up against that property line making the house only eight feet from the next structure. Mr. Tokarski said yes there is a garage to the east that abuts the property line but the garage on the property will be demolished. Mr. Bendel said that the garage on the other property is on the line so any proposed structure you may put up even though it meets the setbacks will be only eight feet from that garage. Mr. Tokarski stated that is correct the garage that is there is only two-three feet away so we are moving the structure five feet away from the lot that is there. Mr. Tokarski stated there is a maintenance easement proposed to allow the home owner to service his house/garage on that side.

Mr. Roberts thanked the applicant for renovating River Ave. however his concerns about the proposed home is that there are so many structures around this proposal. Mr. Roberts further explained the neighborhood around the property and the amount of physical structures which he finds concerning. Mr. Tokarski said at one time there are multiple garages which architecturally speaking does not make a beautiful streetscape. He also stated we are looking to improve that with the new house with a porch and along with that lessening the deficiency by adhering to the setbacks.

Mr. Brady stated that you may remember that I have stated before the Lochner and Campoli decision that decided how these were merged in the first place. Two lots that are adjacent to each other that are undersized, however they may be undersized, the law states that the lot lines merge so you have one conforming tract instead of two non-conforming tracts. Whether the assessor did or however it was done by operation of the law that is how two lots get put together. Mr. Brady further stated that the whole idea of Lochner vs. Campoli was to either eliminate or minimize the degree of non-conforming of properties. Mr. Brady asked the applicant about the adjacent dwelling to the east is partially over the property line, how is that being addressed. Mr. Tokarski said it would remain as an existing condition and addressing it with the maintenance easement. Mr. Brady asked if you have given thought to removing the garage or at least proposing to remove the garage and seeing if the neighbors to the east and the west would be interested in purchasing the property that would then bring their properties into conforming lots. Mr. Brady said that it would generate income, which is not a land use consideration but it would generate income and would bring both properties to the left and right into more conformity. Mr. Tokarski said if they would like to do that he would gladly do it but then they could come before the board to split that property.

Mr. Tokarski stated that he has his civil engineer that he would like to speak. Mr. Brady swore in Matthew Wilder of Morgan Engineering, 130 Central Ave. Island Heights, NJ who stated what his credentials are and that he has testified before this Board before. Mr. Wilder explained that the existing garage and its proximity to the east; one of the benefits to this application is the removal of this detached garage which would increase the setback from three feet to eight feet but in case of a fire the shorter the distance the easier for the fire to jump. One of the purposes of the land use law is to prevent fire, flood and other man-made disasters. I believe the demolition of the garage increases the safety of the area. Regarding the 95' depth lot Mr. Wilder had an exhibit, colorized tax map which was marked into the record as A1 with the date of the meeting as per Mr. Brady. Mr. Wilder stated that to summarize the exhibit there are the blue lots which are lots in the same zoning district that are non-compliant with respect to lot area and lot frontage. The pink lots are compliant with lot area but non-compliant with lot frontage or lot width. There are 65 lots on the exhibit that are non-compliant with lot area and lot width. Most of these lots are 50'x100' lots. There are several that are 50'x50' and some that are 25'x100'. What we are proposing is in keeping with the surrounding area. A majority of the lots in the area are of similar size what we are proposing. Mr. Wilder said if the 95' is an issue he thinks his client would be willing to increase it to 100'.

Mr. Wilder stated that there is a zoning ordinance section which 32-4.4b1 which he quoted in regards to any existing subdivided lots that meet certain requirements are a conforming lot. Mr. Wilder said that the only issue with that stipulation is Lot 6 that has a frontage of 49.22'. It is short frontage of 9 1/2". Mr. Wilder said that when seeking variances is if the benefits outweigh the negative impacts. He further stated he does not see any negative impact and reiterated lot sizes and the safety of fire being increased. Mr. Wilder further explained the positive impacts and creating conditions that are congruent with the area.

Mr. Bendel stated that you mention fire in terms of 3' to 8' and asked if he considered fire from one garage to another is in anyone equivalent to fire from a garage to a dwelling. Mr. Wilder said that he would in terms of his question yes but in terms of the construction codes that the post construction would be safer. Mr. Wilder further explained his opinion on the fire code safety and walls being fire rated.

Mr. Wilder stated that he wanted to review Mr. O'Donnell's letter and the comment on storm water management. He explained that the system currently shown we acknowledge it is insufficient and if approved they would do additional soil testing such as soil boring samples to make sure the system they design is appropriate for the area.

Mr. Noble said assuming it is approved when would the soil sampling be done. Mr. Wilder said that the underground water system would be done when the renovations are done and new house is constructed as they are two different water systems. Mr. Wilder further explained how this would be done. Mr. Noble asked if approved and stipulation was a condition in regards to a time constraint. Mr. Wilder said he would need to speak to his client but Lot 6 would not be an issue but Lot 2 it would depend on when construction is being done. Mr. Noble asked if it can be done prior to lot 2 construction to which Mr. Wilder said no due to many factors. Further discussion on lot 2 and the structure size along with dry wells being installed.

Mr. Brady asked on lot 2 how soon would the garage be removed. Mr. Wilder said that it would be done when new house is constructed. Mr. Brady said that the safety issue with the garage issue being to close that this unsafe issue would remain even if it is 100 years from now that the property is sold then the garage would still be there. Mr. Wilder said yes. Mr. Brady said lot 2 that the building envelope you are proposing requires no setback variances. Mr. Wilder said yes there are no variances at all.

Mr. O'Donnell said that if this is approved the garage would be a secondary structure because there is no primary structure on the lot. Mr. Brady said that is actually a use variance. Mr. O'Donnell said that a bond should be put up to make sure it is removed or could be removed in a certain time. Mr. Noble said we could make a condition that it would need to be removed by a certain date. Mr. Tokarski said we would not have a problem with that.

Mr. Roberts said the mass on River Ave. to the west is a home that runs right down the property line and it takes up most of the property and then the house on River Ave. to be renovated; the next home on West End to the north, we agreed to a variance to the height on that home that we are boxing in that area. Further explanation of the surrounding neighborhood was given by Mr. Roberts. Mr. Roberts stated that all of those homes are just a remarkable amount of building in a very small space and it is his biggest concern with the proposed home.

Mr. Noble opened the floor to the Public.

Mr. Brady swore in Gert Cook of 104 Chestnut Ave. Ms. Cook said that if it is approved she would like the garage removed immediately due to the history of this structure being used as storage and a port a potty there for many years. Mr. Noble said that you would like this as a condition and Ms. Cook said yes.

Mr. Brady swore in Jacob Regiec of 17 Chestnut Ave. Mr. Regiec stated that he owns the house that is on the property line and his concern is that it will only be 8' from his house which has been there 138 years and was built right on the property line. Mr. Regiec said he just wanted to express his concern.

Mr. Brady swore in Mary Dzioba 103 Chestnut Ave. Ms. Dzioba said she is confused about Lot 2 on Ocean regarding setbacks such as the garage that is on the sidewalk would that be where the house would go or it would be setback. Mr. Wilder explained that the new structure would be 21' from the property line. Ms. Dzioba asked if length was 95' and he said yes. Further discussion held by Mr. Wilder and Ms. Dzioba on lot size. Ms. Dzioba asked about the height restriction

which Mr. Wilder said is 35'. Ms. Dzioba asked if it could be 3 stories and Mr. Wilder said Island Heights does not restrict the stories just the height. Ms. Dzioba said the house on West End that was torn down and replaced it with the large house is above the height restriction. Further discussion held by Mr. Wilder and Ms. Dzioba.

Mr. Brady swore in George Thompson 18 Highland Bend. Mr. Thompson stated that he applauds the applicant in renovating the house. Mr. Thompson said he has lived here for 35 years and what has happened over the 35 years the building and density of the town has increased and so has the staff of the Borough. The Master Plan written by the forefathers with the idea of becoming stricter in the zoning and requiring the 75' frontage and minimum lot size of 7,500 sq feet with the grandfathering clause for pre-existing land lock parcels where there is no additional land available. What the Board is being presented here now is very clearly the creation of an undersized parcel. Mr. Thompson said it may have been two lots who knows how long ago but it has clearly been used as a single parcel and accessory structure on the backside clearly indicates that it therefore it is one parcel. Now you are being asked to subdivide it and this again goes to the issue of density throughout the community and you are setting a precedent here. Previously this board has agreed to subdivisions that created undersized lots and each case has to be taken individually but the charm of Island Heights is it's the diversity in building of small and large lots. Also part of the charm is openness and that has been lost. Mr. Thompson said his main concern tonight is to see what direction the Board wants to take the community and is it for greater density and jam in more housing. This will also raise tax rates it doesn't take research to know that tax rates rise along with density. The idea is not to create a ratable; the ratable on the smaller houses is challenging and the cost to the infrastructure and the town exceeds the revenue. The developer ends up with a benefit but when he leaves the town, the town is left holding the prize of increased tax rates and diminished quality of life and the density within the community and should be considered in this and future applications to create undersize parcels. Mr. Thompson stated he understands the reason for subdividing to fund but doesn't feel this is the way.

Mr. Brady swore in Susan Thompson 18 Highland Bend. Ms. Thompson is glad to see the process of renovating 42 River Ave. however she has concerns. She has seen increase in flooding in the two decades she has lived during high tide or a storm event right at 42 River Ave. If she was looking to renovate that home she would be happy to have access to Ocean Ave. because when this road floods unless you have high up vehicle you will not be able to get into the garage on River Ave. Ms. Thompson also stated she is very concerned that we are creating a situation of duress for this property by cutting off the access to Ocean Ave. We are a waterfront community and she thinks we are going to see more challenges with water infiltration on the streets which we have seen with the loss of beaches, flooding more regularly and basements having to be pumped out more regularly. We see this presence of water coming onto our streets and I think we are creating a problem for our town and potential new residents if they are cut off from Ocean Ave. This will land in front of council, which she is currently a member, and we are very challenged currently maintaining our infrastructure and flooding such as the issue at Simpson and River with the flooding. It is feasible that this property will be in front of Council asking for River Ave. to be fixed and we can't. We are trying to fix our water systems, sewer systems and not a lot of revenue generated in town for this millions of dollar projects. Ms. Thompson said she is also concerned about precedent with smaller lot subdivision and with the density and cost to the town that is struggling right now.

Mr. Brady swore in Jim Jablonski 227 Ocean Ave. Mr. Jablonski said that he feels Mr. and Mrs. Thompson eloquently expressed his thoughts. Mr. Jablonski said that he would not like to see the density in this town increase such as Seaside Heights, Elizabeth, etc. Mr. Jablonski said that he would like to see the quality of life preserved and is against an undersized lot.

Mr. Brady swore in Keith Healy 1561 Priscilla Court, Toms River. Mr. Healy stated that he and his wife would like to renovate the house and move into it. We have put a lot of planning and effort into it we are excited along with our three daughters. If we do get this subdivision tonight we have already submitted the building permit and it has been approved. We would like to move in between Thanksgiving and Christmas of this year. Mr. Healy said he has no intention of putting up a port a john on the other light and has no problem tearing down the existing garage during that time period.

Mr. Brady stated that before the board considers anything he would like to disclose that Mr. Healy is a witness for his office that is completely unrelated to do with Island Heights.

Mr. Noble asked about the name of the owner on the application is Mr. Tokarski's.

Mr. Tokarski stated that he is purchasing it from him. They have been friends for over 20 years and are renovating it together.

Mr. Noble asked if there were any additional comments from Mr. Tokarski.

Mr. Tokarski said he does have concerns with flooding and the water run-off issue's is from the Bay up itself instead of the town down. He has seen pictures of the area and how it floods and it is in a flood zone. Addressing the water and flooding conditions, the house safety and dealing with storm water run-off for which is there is no onsite storm water run-off. Basically anything on that lot would run down that property, which is sloped, to the street. The engineering part of this is creating storm water management to the best that anyone could develop property would improve the condition by keeping as much of the storm water run-off on the property and dissipating into the soil. Mr. Tokarski further explained the neighborhood; streetscape and what exactly the application is asking for as far as variances. The character of this neighborhood is 50' wide lots which is what we are asking for. Trying to do the best for the neighborhood, town and heart is to save the house but the reality is that if it can't be done there is more money to be made by knocking it down and replacing with a giant house that would sit back closer to Ocean Ave. Mr. Tokarski said he does not want to see that happen it is more expensive to renovate but they are trying to save a part of history and keep in the character of the neighborhood. Mr. Tokarski further stated that they would like to save this because they care and keep the history and character of the neighborhood.

Mr. Roberts said perhaps he misunderstood but are you implying that if you do not get the variance that you are considering ripping down the house on River Ave. to put up a larger home? Mr. Tokarski replied that without selling the lot that he may have to unload it and it would be financially better to build a new house then the amount of money to fix what is there.

Mr. Bendel said that there is a very serious problem here and not sure whether the Board knows that not necessarily the Board here, but the Board has had a habit of creating non-conforming uses and at least 3 times in the past few years he has voted against it. Mr. Bendel further stated that it is wrong to do and that with all those lots none of those instances have we seen the closeness such as seen in this application. Mr. Bendel said that he hopes they will still renovate but that he cannot vote for this and urges the Board not to either.

Mr. Baxter said that the applicant appears in good faith and seems simple to subdivide and create a non-conforming lot. He understands what the town looks like but there was a reason why the adoption to have 7500 sq foot lots and you are asking us to go backwards to do this and does not feel that is the right step. Mr. Baxter is not in favor of the application.

Mr. Noble said that he would like to echo Mr. Baxter's statement and that we applaud the fact that you want to try to renovate 42 River into something pliable and lovely as far as the community is concerned. At the same time we are a small community and I was taken by Mrs. Thompson's comment about a precedent being set that we cannot deal with in the future. Mr. Noble said that being said he would have to vote down the application.

Mr. Roberts said that we want you to restore and renovate 42 River Ave. and hope that you will go forth with this but he also cannot support this application.

Motion to deny by Mr. Baxter for reasons he stated previously, not in the best interest for the public; the applicant does not meet the requirements granting variances, the hardship requirement in this situation second by Mr. Roberts.

Roll Call Vote:

Mr. Noble	Yes	Mr. Roberts	Yes
Mr. Asay	Absent	Ms. Seibert	Yes
Mr. Bendel	Yes	Mr. Wetta	Absent
Mr. Connors	Yes	Ms. Kier	Absent
Mr. MacNeal	Absent	Mr. Baxter	Yes

Mr. Noble stated that the application is denied and thanked the applicants for coming.

Motion to adjourn the meeting at 8pm was made by Mr. Bendel second by Mr. Roberts. Unanimous Voice Vote.