

**Township of Egg Harbor
Zoning Board**

March 5, 2013

Solicitor: George K. Miller, Jr., Esquire, present
Engineer: Matthew F. Doran, P.E., present
Planner: Edward Walberg, P.P. (Joseph Johnston, P.E., P.P., in attendance)
Zoning Officer: Patty Chatigny, Zoning Officer, present

A regular meeting of the Zoning Board of Adjustment of Egg Harbor Township was held on the above-date, 7:00 p.m., prevailing time, Egg Harbor Township Hall, Egg Harbor Township, New Jersey. The Chairman opened the meeting by reading the statement in compliance with the Open Public Meetings Act

Roll call taken as follows:

John C. Amodeo, Class IV, present	John Haines, Class IV, Chairperson, present
Leonard Dagit, Jr., Class IV, present	Norma Lombardi, Class IV, present
Anthony DiDonato, Alt. #I, present	Chrissy Martin, Class IV, III
Beth Epstein, Class IV, present	Andrew Parker, Alt. #II, present
Chuck Gunther, Alt. #III, III	Paul Savini, Class IV, Vice-Chairperson, present

PUBLIC HEARING(S):

- | | |
|---|-------------------------------------|
| 1. V 01-10 | "D" Variance |
| Matzel & Mumford at Egg Harbor, LLC | 4305/4 |
| "Bayport on Lake's Bay Community" | Black Horse Pike |
| Zone: R-5 Apartment, 36.5 acre site, sewer/water, | Waiver of time – Not Granted |

Property is currently known as Bayport on Lake's Bay Community which is a partially constructed 131 unit residential townhouse/condominium community. The applicant is seeking approval to construct the remaining townhouse/condominium buildings #5, 7, 8 9 and 17 (total of 37 units) at a height of 36' ft. which is 3' ft. higher than the 33' ft. variance approved by the Planning Board in 2003 and for which is 6' ft. higher than the 30' ft. height permitted within the R-5 Apartment zone.

Applicant is seeking this relief due to the adoption of the Federal Emergency Management Agency (FEMA) Advisory Base Flood Elevation (ABFE) Maps on December 15, 2012 and made mandatory by Governor Christie through the adoption of emergency regulations on January 24, 2013. The base flood elevation for this community is 7.7' feet, however, the Advisory Base Flood Elevation has been set at 10' feet representing a potential increase in the base flood elevation of at least 2.3' feet for the Bayport on Lakes's Bay Community. CAFRA.

General Requirements Checklist Waiver(s):

1. **Item #10: Traffic Impact Assessment**
2. **Item #11: Letter of interpretation from the N.J.D.E.P. stating no freshwater Wetlands or freshwater wetland transition area within the subject property**

Variance Checklist Waiver(s):

1. **Item #1: Scale of plans at 1" = 100' feet**

2. **Item #2: Sheet Size**
3. **Item #6: Metes and bounds description**
4. **Item #7: Property lines shown in degrees, minutes and seconds**
5. **Item #8: Key Map**
6. **Item #13: Space for signatures for Chairman and Secretary of the Zoning Board**
7. **Item #16: Zoning district and all applicable zoning items show on the plan**
8. **Item #19: Photograph of the property**
9. **Item #29: 200' ft. line drawn on the plan showing existing structures and their Distances from existing property lines, required setbacks and lot dimensions**
10. **Item #42g,l,j,k Natural resource inventory information**
11. **Item #45: Stormwater management calculations**
12. **Item #46: Purpose of any easement shown on the plans**

Variance Relief:

1. **§225-7: Height: 30' ft. permitted, 33' ft. approved/existing, 36' ft. proposed**

Chairman Haines asked if Board Solicitor Miller would like to comment concerning this application before the applicant begins. Board Solicitor Miller advised this is a limited application and is directly related to the storm (Hurricane Sandy). He advised this project was an already approved subdivision, which is about 70% to 80% finished. Board Solicitor Miller advised this Board is bound by the approval previously granted by the Planning Board. He indicated this application is not the typical application the Board reviews. He indicated normally the Board reviews the "d" variance and if approved reviews the site plan also. Board Solicitor Miller stated this will not occur with this application.

Board Solicitor Miller advised this Board is limited to one (1) issue with respect to this application. He further noted the Board may see additional application(s) such as this. Board Member Dagit stated he believes Township Administration is considering an ordinance amendment for height. He asked if this ordinance were already passed would this applicant be before the Board. Board Solicitor Miller stated no. He indicated in response to building other towns are allowing a four (4) year grace period from the height restrictions or they are administratively increasing the height of the homes. He used Amherst Avenue in Margate as an example of the heights now required. Again, Board Solicitor Miller stated if the ordinance was approved the applicant would not be here. However, the applicant did not want to wait.

Keith Davis, Esq., introduced himself as attorney for the applicant, Bayport @ Lakes Bay in West Atlantic City. He indicated it is block 4305 lot 4. Attorney Davis advised he is aware Township Committee is amending the definition of height within the A and Z zones (these are FEMA acronyms). He advised the height will be based upon elevation with respect to the advisory maps from FEMA and for which the Governor has made them law within New Jersey.

Attorney Davis stated he believes the ordinance will be proposed at the advisory height levels and 1' ft. of freeboard, however, the applicant is asking for 2' ft. of freeboard which is what FEMA is suggesting. Therefore, to protect the public safety and have consistency to the State directive the applicant is proposing 2' ft. of freeboard .

Attorney Davis advised this project was an application before the Planning Board. He explained the project is before this Board because the height is proposed to go up more than 10%. Attorney Davis advised the Planning Board did grant "c" variance relief for height with the original application. He

stated because of this the applicant had to come to this Board in order to go higher. Attorney Davis stated there are 131 units approved of which 37 units have not been constructed. These 37 units will be contained within five (5) separate buildings. Attorney Davis advised the applicant is seeking approval to increase the height of the buildings another 3' ft. He advised the buildings effective will blend in with the remaining development and will go almost unnoticed.

Attorney Davis stated the applicant sees this application as public safety issue and will protect the future resident's from flooding, as well as, complying with the current policy of the State of New Jersey.

Attorney Davis advised he has submitted a proof package to the Board Office and there are three (3) gentleman present this evening that may provide testimony, therefore, he has asked they be sworn.

May the record reflect the following individuals were duly sworn by Board Solicitor Miller: Mark Toconita, New Jersey Licensed Architect, David Fisher, New Jersey Licensed Planner, Carl Eler, Esq., in house council for K. Hovnavian

Mark Toconita advised he has been an architect since 1979. He is an architect for K. Hovnavian Associations, for whom Matzel and Mumford is a division of. Architect Toconita stated he prepared the plans submitted. He then referred to **Exhibit A1:** colored rendered elevation of one (1) proposed three (3) building and one (1) existing three (3) story building, advising the stoops of the new building will have four (4) steps up and a little extra freeboard between the garage and the front window.

Architect Toconita referred to **Exhibit A2:** building elevation showing first floor, garage, entry foyer, etc., advising he raised everything with garage 2 ½ from grade. He advised the units were previously approved at 33 ½' ft. and this is what is being constructed. He advised the applicant is now seeking to build at 35 ½' ft. Board Member Lombardi asked what the height of the slab will be that the car will be parked on? Architect Toconita they will be between 9 ½' or 10' ft. He indicated they will be below food elevation. Board Member Lombardi asked what level is the living space and mechanicals be on? Architect Toconita stated the first floor is the foyer, which is living space. He stated it will be higher by 2' ft. and the mechanicals will be 2 ½' above where they currently exist. Attorney Eler advised all living areas will be at 13.3' ft. , which will be above the FEMA requirement for this area which is 11' ft.

Board Member Dagit asked what zone has FEMA considered this property in. Attorney Eler stated they have designated it an A.

David Fisher, Planner, employed with K. Hovnavian and for whom Matzel and Mumford is a division of. Planner Fisher stated he has been before the Township before. He indicated he was present for the applicant during a Technical Review Committee Meeting in 2009. Planner Fisher advised he is familiar with the Township Master Plan, the Township Zoning Ordinance and where the property is located.

Planner Fisher referred to **Exhibit A3:** one (1) sheet site plan layout of location and units. Planner Fisher stated the property is located along the Black Horse Pike, within West Atlantic City, across from the motels. He indicated Lakes Bay is in the rear of the project. He indicated the site consist of 17 buildings and on the eastern side of the project is Bayport Drive and an office building.

Planner Fisher stated there are five (5) buildings that have not been constructed they are #5, 7, 8, 9 and 17. He advised the tract is adjacent to Lakes Bay, which is a tidal flow. He indicated the tide goes in and out. Planner Fisher also advised the site does have drainage already constructed for storm events.

Planner Fischer explained that in 2003 the Planning Board granted preliminary and final approval with variance relief to this project. The variance relief granted was from the height requirements. He indicated the zone calls for 30' ft. and the applicant was granted 33' ft. to constructed the 131 units. He advised the applicant is now seeking relief for an additional height of 3' ft.

Attorney Davis asked Planner Fischer how height is now defined within the Township Ordinance? Planner Fischer stated under the Township requirements height is defined from the grade to the mean level of the highest peak. He stated most towns have the same definition, however, they have a height requirement of 35' ft. versus the 30' ft. required by the Township. He added that some towns (Toms River, Little Egg Harbor Township) have also adopted additional ordinances because of the hurricane. He advised they have raised their height requirements, which are from the flood level not the grade.

Planner Fischer advised 37 units will be affected by the height variance requested. Planner Fischer presented **Exhibit A4:** dated November 4, 2012, Ariel Photograph of site taken via FEMA . Board Member Lombardi asked if any units within this project were damaged during the hurricane? Planner Fischer stated none that he is aware of.

Planner Fischer referred to **Exhibit A5:** ABFE Map (Advisory Base Flood Elevation Map) titled I-V Oceanville. He indicated on this exhibit it is hard to see however, in the bottom corner the applicant's property is shown. He then referred to **Exhibit A6:** enlargement of ABFE Map showing the property enlarged stating this exhibit shows the boundary between the "A" zone and the "V" Zone. He indicated FEMA distinguishes between an "A" and an "A5" zone, which is characterized by the wave action. Planner Fischer stated that as shown on the map this development and the office building located on the opposite side of Bayport Drive are an "A" zone.

Attorney Davis stated this "A" zone is shown and determined by the Base Flood Elevation Map issued by FEMA. Planner Fischer stated yes. He indicated Governor Christie issued an order and the Department of Environmental Protection issued an emergency order that development must now be constructed via these maps. He indicated the applicant is trying to comply with this order and construct to the requirements.

Planner Fischer stated the positive criteria for making this application is to demonstrate proper rational. He stated there are three (3) reasons he believes it should be approved. He advised he believes it would advance the health and welfare of the public. He indicated that by raising the five (5) buildings it will place units at a higher elevation to comply with the new maps. Planner Fischer also advised that by granting the variance relief it will protect residents from floods and safety will be a direct connection to this. He further noted that by granting variance it would ensure development will not conflict with the requirements of the State and the applicant is being consistent, it makes sense.

Attorney Davis asked if the new building design will be noticed. Planner Fischer stated the finished floor area will be 2' ft. above the flood level. He indicated there will be very little difference between the proposed and the existing. Planner Fischer advised for the negative criteria this project is located in an isolated area and for the most part there will be no other development. He indicated the proposed design is to be a seamless transition in order to be consistent.

Planner Fischer noted the applicant is not changing the location of the buildings, the floor plan, length nor depth of the buildings. Planner Fischer advised he believes the variance should be granted. He also

explained the applicant is requesting several waivers. Planner Fischer stated taken together they are not required because of the minor nature of the change. He stated the wetlands and the environmental concerns were previously approved and nothing has change nor has the traffic pattern since the same number of units and buildings are proposed and exist. Planner Fischer advised the site plan waivers were on the first set of plans submitted to the Planning Board.

Board Member Amodeo asked if any thought was given to existing units once the applicant goes above a threshold they have less risk. He stated this would reduce the flood insurance cost to the new units but would it cause a problem to the existing units? Planner Fisher stated the Home Owners Association carries the insurance for the buildings (units). He stated it would help with the insurance that these five (5) buildings will be above. Board Solicitor Miller wanted to clarify for the record that the applicant is proposing 2' ft. of freeboard. Planner Fischer stated the base elevation is 11 and FEMA has recommended 2' ft. freeboard. He advised it is good practice to follow FEMA's suggestion. He indicated it will benefit the community.

Board Engineer Doran stated the only question he had was if the applicant was making any grading changes. He advised they have indicated they will not. He advised the checklist waivers listed are not necessary, therefore he will recommend they be waived. He advised the height variance speaks for itself.

Board Planner Johnston stated he had two (2) concerns. The first was the elevation view of what the units would like with 2' ft. of freeboard. He advised the applicant has provided this information this evening. He indicated the second item is requiring the applicant to provide the signature line for the Chariman and Secretary on the plan. He advised the applicant should revise the plans to provide this so that everyone knows this is the new approval.

Zoning Officer Chatigny stated she has no comment.

Motion DiDonato/Dagit to open public portion. Vote 7 yes:

Gary Field, 115 Dunlin Lane, WAC, Egg Harbor Township, sworn in: Mr. Field stated his question or really his concern is that the streets are narrow and parking is a problem. He stated anything that can improve the availability of additional parking would help. He advised if you drive through the development you can see it. Mr. Field stated you do not have to a professional to realize there is a parking issue.

Mr. Field stated when his daughter parks her Toyota Camry the back end of the car actually goes onto the neighbor's driveway. He asked if there was any new parking associated with these buildings.

Attorney Davis stated the parking associates with this overall project is governed by the Residential Site Improvement Standards (RSIS). He explained the town has little flexibility with respect to parking. He advised the project complies those standards. Attorney Davis advised there is existing parking around the club house for guest and each unit has a garage and driveway that can be used for parking.

Attorney Davis advised the parking requirements were reviewed and approved based upon the number of units.

Mr. Field's thanked the Board and the applicant. Chairman Haines stated the Board appreciates Mr. Fields' coming out.

Motion Dagit/DiDonato Close public portion. Vote 7 Yes

Attorney Davis advised he believes the Planner did a great job explaining the request, which is based upon the new maps issued by FEMA. Attorney Davis state FEMA is the agency that requires this compliance because they are the agency who deals with the requirements with flooding. Attorney Davis stated by increasing the height of these buildings it will help with the flood insurance and everyone in the development will benefit from this. He advised he believes this application advances zoning and will have little impact to the community.

Board Solicitor Miller stated the application is clear. He stated the applicant must submit revise plans having the signature line affix to them.

Condition(s) of Approval:

- 1. Provide space for signatures of Chairman and Secretary of the Zoning Board**
- 2. Address all applicable comments and concerns within the Board Planner(s) report dated: February 25, 2013.**
- 3. Address all applicable comments and concerns within the Board Engineer(s) report dated: February 25, 2013**

Board Opinion(s):

N. Lombardi: stated she lives on Bay Drive and is a neighbor. Board Solicitor Miller advised for the record that Board Member Lombardi does not live within 200' of this project. Board member Lombardi stated she watched the developers bring this site up to grade preparing it for the initial units. She stated she believes the units are excellent and elevating is the belt and suspenders. She stated the only problem has come forward and that is the parking. She stated it is only common sense and livability. Board Member Lombardi stated everyone has big cars and there is only parking on one side. She indicated the applicant has the space they should really provide. Again, raising the elevations is excellent.

A. Parker: applicant presented case well. Sounds as the applicant is doing the right thing.

B. Epstein: Like that the applicant is not thinking a minimum is not the maximum. Stated she is pleased the applicant is going a little above so they can ensure no problem with units. Indicated nothing bad with what is proposed.

J. Amodeo: Stated he was concerned with any negative impact to people living there. He advised the applicant explained the flood insurance is pooled and a number of units will now be above so it helps the community as a whole.

L. Dagit: Indicated we will be seeing a lot of these request along the coast. The applicant is being pro-active and administration will be addressing this issue in the future.

A. DiDonato: Advised this request makes sense and common sense is the best thing. Stated he has no problem with them raising building.

P. Savini: Thanked the applicant for their informative discussion and establishing the positive and negative criteria. He advised the increase in height is a mandate, however, like the extra step that has been taking in addressing this issue.

Chairman Haines: advised this is a pro-active approach and will be voting in favor.

Motion Dagit/Savini to grant requested general, "d" variance checklist waivers (as listed on agenda) 1-5 and 7-12, and "d" variance relief: §225-7: Height: 30' ft. permitted, 33' ft. approved/existing, 36' ft. proposed. Vote 7 Yes: Amodeo, Dagit, DiDonato, Epstein, Lombardi, Savini, Haines

SUMMARY MATTER(S):

1. Discussion of matters pertaining to the Board.

Board Secretary Wilbert explained she will not be present for the next regularly scheduled meeting to be held on April 1, 2013. She advised Zoning Officer, Patty Chatigny has offered to assist the Board during her absence.

Board Secretary Wilbert advised the Board will memorialize the resolution for the application that was discussed this evening. She stated there must be a quorum of the members who voted on this application tonight present for the April 1, 2013 meeting.

The next meeting of the Egg Harbor Township Zoning Board of Adjustment is scheduled for **Monday, April 1, 2013, 7:00 p.m., prevailing time.**

MOTION Dagit/Parker TO ADJOURN AT 7:50 P.M.: VOTE 7 Yes: Amodeo, Dagit, DiDonato, Epstein, , Lombardi, Savini, Haines.

Respectfully submitted by,

Theresa Wilbert, Secretary

