

SEA GIRT PLANNING BOARD

WEDNESDAY, JULY 19, 2017

The Regular meeting of the Sea Girt Planning Board was held on Wednesday, July 19, 2017 at 7:00 pm in the Sea Girt Elementary School, Bell Place. In compliance with the "Open Public Meetings Act", Chapter 231, P.L. 1975, Section 5, adequate notice of this meeting has been given to the official newspapers of the Sea Girt Planning Board, posting a notice in a public place as required by law and filing the notice with the Borough Clerk fixing the time and place of all hearings. After a Salute to the Flag, roll call was taken:

Present – Larry Benson (arrived 7:08), Karen Brisben, Jake Casey, Eileen Laszlo, Ray Petronko (arrived 7:23), Robert Walker, John Ward

Absent – Carla Abrahamson, Mayor Ken Farrell, Councilwoman Anne Morris, Norman Hall

Also present was Kevin Kennedy, Board Attorney and Board Secretary Karen Brisben recorded the Minutes. There were 12 people in the audience.

The Minutes of the June 21, 2017 meeting were approved on a motion by Mr. Ward, seconded by Mr. Casey and unanimously approved, all aye.

Mr. Kennedy then swore in the newest Planning Board member, Robert Walker, who was sworn in as Alternate Member #2. Board member Bret Violette had to resign due to work commitments, so Jake Casey moves up to Regular Member Class IV and John Ward moves up to Alternate Member #1.

OTHER BUSINESS:

Due to some members not arriving on time and needed to hear the Use Variance application, Vice-Chairwoman Laszlo moved the agenda around and the Board considered a request from Council to consider steps as part of yard setback coverage, they were in discussion of revising the Zoning Ordinance, Section 17-2, and asked for Planning Board input. Mrs. Brisben started the discussion and didn't feel the steps should be within the setbacks as these are new homes being built, the developer is starting from a clean slate with a vacant lot and she felt a home can be properly built within the correct setbacks, steps included. The rest of the Board agreed, however, Christopher Rice, Architect, was in the audience for the application this evening and he asked to speak. He explained that if you own a 50 foot wide lot you may need some of the setback for window wells, some of which do have stairs in them for egress from the basement. He agreed with keeping within the setbacks in the rear yard of a property

but felt it would be onerous to require this in the side yard setback due to these window wells, he said the rule has always been 16 inches or less can be put in.

Mrs. Brisben read the email from Borough Administrator Lorraine Carafa which just asked for input on stairs in side or rear yard setbacks, she did not mention window wells. Mr. Kennedy felt the best way to handle this is to inform Council of the Planning Board's thought that steps should be within the setbacks but should let Council know of Mr. Rice's concerns. At this point Mr. Kennedy asked for a motion to direct Mrs. Brisben to write to Council letting them know of the Planning Board's input and Mr. Rice's comments. This was done on a motion by Mr. Ward, seconded by Vice-Chairwoman Laszlo and then unanimously approved by voice vote, all aye.

OLD BUSINESS:

The Board then turned to the approval of a Resolution to allow a Minor Subdivision for Block 99, Lot 7, 706 Chicago Boulevard, owned by Michael and Tricia White, to create two buildable lots. As all Board members, as well as the applicants' attorney, had received a draft copy and there were no changes or recommendations, the following was presented after Mr. Kennedy went over the conditions:

WHEREAS, Michael and Tricia White have made Application to the Sea Girt Planning Board for the property designated as Block 99, Lot 7, commonly known as 706 Chicago Boulevard, Sea Girt, NJ, within the Borough's District 1, West Single-Family Zone, for the following approval:

- Minor Subdivision Approval; and

PUBLIC HEARING

WHEREAS, the Board held a Public Hearing on June 21, 2017; and

EVIDENCE/EXHIBITS

WHEREAS, at the said Hearing, the Board reviewed, considered, and analyzed the following:

- Land Development Application, dated March 6, 2017, introduced into Evidence as A-1;
- Land Development Application Checklist, introduced into Evidence as A-2;
- Minor Subdivision Plan, prepared by The Cannon Group, P.C., dated October 8, 2013, introduced into Evidence as A-3;
- Survey, prepared by Charles O'Malley, PLS, dated September 21, 2016, introduced into Evidence as A-4;
- Review Memorandum from Leon S. Avakian, Inc., dated April 19, 2017, introduced into Evidence as A-5;
- Report from the Sea Girt Planning Board Subdivision Committee, dated March 22, 2017, introduced into Evidence as A-6;
- Memorandum to the Tax Assessor, from the Planning Board Secretary, dated March 22, 2017, with hand-written response thereto, introduced into Evidence as A-7;
- Freehold Soil Certification Letter, dated May 16, 2017, introduced into Evidence as A-8;

WITNESSES

WHEREAS, sworn testimony in support of the Application was presented by the following:

- Michael White, one of the Applicants;
- C. Keith Henderson, Esq., appearing;

TESTIMONY AND EVIDENCE PRESENTED

WHEREAS, testimony and other evidence presented on behalf of the Applicants revealed the following:

- The Applicants herein are Michael and Tricia White.
- The Applicants are the Owners of the subject property.
- The Applicants have owned the project since approximately 2011.
- The subject property currently contains 17,388 square feet.
- The subject site currently contains the remnants of a single-family dwelling, detached garage, in-ground pool, swing set, and other site amenities. (The said improvements were badly damaged in a fire.)
- The Applicants intend to demolish the existing structures.
- The Applicants are proposing to subdivide the site into 2 Lots; namely, proposed Lot 7.01 and proposed Lot 7.02.
- Details pertaining to the 2 proposed Lots include the following:

PROPOSED LOT 7.01

Minimum Required Lot Area:	7,500 SF
Proposed Lot Area:	9,888 SF
Proposed Use:	New single-family home

PROPOSED LOT 7.02

Minimum Required Lot Area: 7,500 SF
Proposed Lot Area: 7,500 SF
Proposed Use: New single-family home

- As referenced, both Lots will ultimately host a single-family home.

VARIANCES

WHEREAS, the Application as presented does not require approval for any new Variances; and

PUBLIC COMMENTS

WHEREAS, there were no members of the public who expressed any questions, comments, concerns, or objections associated with the Application.

FINDINGS OF FACT

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Sea Girt, after having considered the aforementioned Application, plans, evidence, and testimony, that the Application is hereby **granted with conditions**.

In support of its decision, the Planning Board makes the following Findings of Fact and Conclusions of Law:

1. The Sea Girt Planning Board has proper jurisdiction to hear the within matter.
2. The subject property is located at 706 Chicago Boulevard, Sea Girt, NJ, within the Borough's District 1, West Single-Family Zone. (The subject property (i.e. the mother Lot) is located on the southeast corner of Chicago Boulevard and Eighth Avenue.)
3. The subject site currently contains 17,388 SF.
4. The Applicants propose to subdivide the property into 2 Lots; namely, proposed Lot 7.01 and proposed Lot 7.02.
5. Such a proposal requires Minor Subdivision Approval.
6. There are no Variances associated with the within proposal.
7. Each of the new Lots created hereunder will host a new single-family home.
8. Single family homes are permitted uses in the subject Zone.
9. The single-family homes to ultimately be constructed on the Lots will comply with all Prevailing Bulk Requirements. That is, and as indicated, there are no Variances required in connection with the within Application.
10. The newly created Lot Sizes will comply with all Prevailing Lot Area Requirements.
11. There was no known public opposition associated with the Application.

12. Subject to the conditions contained herein, and subject to any necessary waivers, the Application as presented satisfies the Minor Subdivision Requirements of the Borough of Sea Girt.

13. Based upon the above, and subject to the conditions contained herein, the Board is of the unanimous opinion that the Minor Subdivision Application can be granted without causing substantial detriment to the public good.

CONDITIONS

During the course of the Hearing, the Board has requested, and the Applicants have agreed, to comply with the following conditions: (Note: Unless otherwise indicated, all Plan Revisions shall be subject to the review and approval of the Board Engineer.)

- a. The Applicants shall comply with all terms and conditions of the Leon S. Avakian Review Memorandum, dated April 19, 2017 (A-5).
- b. The Subdivision shall not be perfected until such time as the existing structures on the site are demolished / removed, as confirmed by Borough Zoning / Construction Officials.
- c. In the event the subdivision is to be perfected via Deed, the Subdivision Deed (including the legal descriptions) shall be reviewed and approved by the Board Attorney and Board Engineer.
- d. Prior to the issuance of any Construction Permits, the Applicants (or successor Applicants / Owners) shall submit grading, drainage, plot, and utility plans (and drainage calculations) to the Board Engineer, for his review and approval.

- e. The Applicants, or any successor Applicants / Owners, shall comply with all Prevailing Rules and Regulations of the Municipal Utilities Authority. Additionally, the Applicants shall pay / satisfy any applicable sewer / utility connection fees (and any other charges / fees due and owing.)
- f. Prior to the issuance of any Building Permit, the Applicants, or any successor Applicants / Owners, shall submit detailed Plans / Elevations – and the said documents shall be reviewed / approved by the Board Engineer (as well as any other applicable municipal official).
- g. The Applicants shall attempt, in good faith, to preserve as many trees on site as possible.
- h. Any single-family homes to be constructed on the newly created Lots shall comply with all Prevailing Bulk Zoning Regulations (as no Variances are granted hereunder.)
- i. The subdivision shall be perfected in accordance with Requirements of New Jersey Law (and within the timeframe set forth in New Jersey Law.)
- j. The Applicants shall review the proposed Block / Lot designations with the Municipal Tax Assessor so as to confirm the acceptability of the same.
- k. The Applicants (or any successor Applicants) shall comply with all applicable Affordable Housing Related Ordinances / Regulations (contributions / directives) of the State of New Jersey, of the Borough of Sea Girt, COAH, the Court System, and any other Agency having jurisdiction over the matter.
- l. Any construction / development of the Site shall comply with the Prevailing FEMA Requirements.
- m. The Applicants shall comply with all terms and conditions of the review memoranda, if any, issued by the Board Engineer, Construction Office, the Department of Public Works, the Office of the Fire Prevention and Investigation, and/or other agents of the Borough.

- n. The Applicants shall obtain any and all approvals (or Letters of No Interest) from applicable internal / outside agencies - including, but not limited to, the United States of America (FEMA), the Department of Environmental Protection (CAFRA), the Monmouth County Planning Board, the Freehold Soil Conservation District, the local utility offices, the Department of Public Works, the local Fire Department, and any other Agency having jurisdiction over the matter.
- o. The Applicants shall, in conjunction with appropriate Borough Ordinances, pay all appropriate/required fees, taxes, and inspection fees.
- p. If required by the Board Engineer, the Applicants shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.

BE IT FURTHER RESOLVED, that all representations made under oath by the Applicants and/or their agents shall be deemed conditions of the approval granted herein, and any misrepresentations or actions by the Applicants contrary to the representations made before the Board shall be deemed a violation of the within approval.

BE IT FURTHER RESOLVED, that the Application is granted only in conjunction with the conditions noted above - and but for the existence of the same, the within Application would not be approved.

BE IT FURTHER RESOLVED, that the granting of the within Application is expressly made subject to and dependent upon the Applicants' compliance with all other appropriate Rules, Regulations, and/or Ordinances of the Borough of Sea Girt, County of Monmouth, and State of New Jersey.

BE IT FURTHER RESOLVED, that the action of the Board in approving the within Application shall not relieve the Applicants of responsibility for any damage caused by the subject project, nor does the Planning Board of the Borough of Sea Girt, the Borough of Sea Girt, or its agents/representatives accept any responsibility for the structural design of any constructed improvement, or for any damage which may be caused by the development / subdivision.

A motion to approve the above Resolution was made by Mr. Ward, seconded by Mr. Casey and then by the following roll call vote:

Ayes: Jake Casey, Eileen Laszlo, John Ward

Noes: None

Not Eligible to Vote: Larry Benson, Karen Brisben, Ray Petronko, Robert Walker

The Board then considered a Resolution of Denial of site Plan/Use Variance for Block 77, Lot 1 & 2 and Block 77, Lot 16 & 17, Washington Boulevard properties owned by various Sitar companies, to deny use of allowing residential apartments in a Commercial Zone. Mr. Kennedy explained this is a very long Resolution as there is a lot of information due to the application itself, the litigation and the remand back to the Planning Board. He said if this goes to Court again the Court needs to have knowledge of what transpired and he tried to capture it in the Resolution itself, including the history of this application back to its original hearing. He then went over several pages of interest and emphasized the point of the Board wanting to keep Commercial use in the small Commercial zone here and they were also concerned with the density variance requested; he also outlined the objectors' opinions and that the Board did not have to agree with all their opinions. This has now been going for 5 years and the he pointed out, in the Resolution, the Board did not think they presented a basis for approval.

Mr. Kennedy also told the Board this was a lawfully done application to the Board and was not asking for "spot zoning", this was not an improper application. At the conclusion of Mr. Kennedy's remarks Mr. Petronko said that a good job was done by Mr. Kennedy; Mr. Casey asked for clarification on comments on page 30 regarding the applicant's ability to get tenants for commercial use and Mr. Kennedy said he will clarify his statements here to say the Board does not agree with the applicant's argument on that, the nature of the market has changed. He also left some blank spots in regards to coverage and density as he wants to get them confirmed with Mr. Avakian.

As no other Board members had any other comments or questions, the following was presented for approval (Note: the following Resolution is the final one approved after speaking with Mr. Avakian and changes on page 30)

WHEREAS, representatives of 501 Washington Boulevard, LLC, 503 Washington Boulevard, LLC, Sitar Sea Girt, LLC, and 900 Fifth Avenue, LLC (hereinafter collectively referred to as the “Applicant”) have made Application to the Sea Girt Planning Board for the property designated as Block 76, Lots 1 and 2, and Block 77, Lots 16 and 17, located at the Washington Boulevard and Fifth Avenue intersection, Sea Girt, New Jersey, within the Borough’s District 2 East Convenience Commercial Zone, for the following approvals: Use / “d(1)” Variance Approval, Density “d(5)” Variance Approval, Bulk Variance Approval, and Site Plan approval to effectuate the following:

- Demolition of existing buildings and associated on-site amenities; and
- Construction of two 2 ½ story apartment buildings, with each building consisting of 8 apartments (for a total of 16 apartments), with associated off-street parking, lighting, and landscaping; and

PUBLIC HEARINGS

WHEREAS, the Board held Public Hearings on March 21, 2012, April 18, 2012, May 16, 2012, May 17, 2017, June 20, 2012, July 18, 2012, August 15, 2012, September 19, 2012, October 17, 2012, and, per an Appellate Court Order, May 17, 2017, with the Applicant’s representatives having filed proper Proof of Service and Publication in accordance with Statutory and Ordinance Requirements; and

PARTIES OF RECORD

WHEREAS, the Applicant herein was represented by Thomas Hirsch, Esq.; and

WHEREAS, per the submitted documentation, the following individuals formally objected to the said Application:

- Peter and Catherine Abitanto
- Mary L. Adams
- Bob and Karin Ajmani
- Joseph Barresi
- Douglas Bender
- Christopher Bodner
- Matthew Brady
- Thomas C. and Sandra Brown
- Jane and Bill Bryan
- Gary and Pat Cademartori
- Albert and Carolyn Cahill
- Cory Carlesimo
- Sara Church
- Patricia C. and Michael C. Connor
- Joseph Cositore
- Tom and Valarie DeFelice
- Sam and Hillary DiFeo
- David and Katharyn DiBenardo
- Lynn and Michael Drury
- Bill and Barbara Duffy
- Mary F. Farrell
- Patrick Finn
- Cathy and Doug Fuge
- Jack Giegerich
- Theresa and Michael Gray
- Christopher and Laura Grosso
- Irene Haran
- Kevin and Kathleen Hoffman
- Donna Hosetter
- Glenn and Dana Hughes
- John A. Hurley
- Thomas Jennings
- Michael Keefe
- John Kemper

- Eileen and Andy Laszlo
- Michael and Holly Lawroski
- Anthony and Donna Lombardo
- Sharon Lucid
- Lauren and Bill Lynch
- Theresa Manley
- Joseph and Theresa Martini
- Sandra L. Marvinney
- Margaret Mathers
- Mary Elizabeth O'Connor
- Peggy and Gordon Pingier
- Dorothy Shanahan
- Carrie Shumway
- Joan Schneider
- Allen Silk
- Brian and Maryanne Wade
- Bill Walsh
- Joseph W. and Mary Walsh
- Lee Wilson

WHEREAS, the said Objectors were represented by Edward Liston, Esq.; and

APPLICANT'S WITNESSES

WHEREAS, sworn testimony and evidence on behalf of the Applicant was presented by the following:

- Scott Turner, P.E., CME;
- Gregory Cox, Architect;
- Gary Dean, Traffic Engineer;
- Donald Moliver, Appraiser, CTA, Counselor of Real Estate, and Dean of the Hess School of Business at Monmouth University;
- William Joseph Sitar, one of the Principals of the applying entities; and
- Dan McSweeney, Professional Planner

OBJECTORS' WITNESSES

WHEREAS, sworn testimony and evidence on behalf of the Objectors was presented by the following:

- Thomas A. Thomas, Professional Planner;
- Tom Jennings;
- Michael Keefe;
- Joseph Canterino;

BOARD WITNESSES

WHEREAS, sworn testimony and evidence presented on behalf of the Planning Board was presented by the following:

- Peter Avakian, P.E., PLS, P.P., Board Engineer;
- Richard Coppola, P.P., A.I.C.P., Special Board Planner;

EVIDENCE / EXHIBITS

WHEREAS, at the 2012 initial Hearings, the Board reviewed, considered, and analyzed the following (Note: For record-keeping purposes, documents submitted on behalf of the Applicant and/or otherwise identified during the Applicant's portion of the Hearing were marked and identified with the letter "A". Additionally, documents introduced on behalf of the Objectors and/or during the Objectors' portion of the Hearing were marked and identified with the letter "O". Likewise, items introduced on behalf of the Board were marked and identified with the letter "B".):

- *A-1: Land Development Application (with statement of variance request), dated on or about September 30, 2011;*
- *A-2: Partnership / Corporate Disclosure form, undated;*
- *A-3: Land Development Application Completeness Checklist;*
- *A-4: Correspondence from the Applicant's then attorney, to the Board Secretary, dated September 30, 2011;*
- *A-5: Correspondence from the Applicant's then attorney, to the Board Secretary, dated October 14, 2011;*
- *A-6: Site plan prepared by Menlo Engineering Associates, Inc., dated August 25, 2011, last revised, December 23, 2011, consisting of 14 sheets;*
- *A-7: Architectural plans, prepared by Aquatecture Associates, Inc., dated August 18, 2011, last revised, January 6, 2012, consisting of 7 sheets;*
- *A-8: Stormwater Management Report, prepared by Menlo Engineering Associates, Inc., dated August 25, 2011, last revised December 23, 2011;*
- *A-9: Survey of property, prepared by Control Layouts, Inc., dated July 13, 2011, consisting of 1 sheet;*
- *A-10: Traffic report, prepared by Dolan and Dean Consulting Engineers, LLC, dated January 4, 2012;*
- *A-11: An operation and maintenance manual for the subject project, prepared by Menlo Engineering Associates, Inc., dated August 25, 2011;*
- *A-12: A Soils and Foundation and Investigation Report, prepared by Melick – Tully and Associates, PC, dated September 13, 2011;*
- *A-13: Correspondence from Thomas J. Hirsch, Esq., to the Board Attorney, dated March 15, 2012 (regarding list of objectors);*
- *A-14: Aerial photograph of the subject site;*

- *A-15: Aerial view of the subject site, with a proposed plot plan imposed thereon, prepared by Menlo Engineering Associates, dated March 21, 2012;*
- *A-16: Aerial photograph of the subject site, prepared by Aquatecture Associates, Inc., dated March 6, 2012;*
- *A-17: Aerial photograph of the subject site, superimposed with a proposed rendering (with parking area), prepared by Aquatecture Associates, Inc., dated March 6, 2012;*
- *A-18: Illustrated rendering of the proposed building, prepared by Aquatecture Associates, Inc., dated February 3, 2012;*
- *A-19: Elevations (for the north building), prepared by Aquatecture Associates, Inc., dated August 18, 2011, last revised January 6, 2012;*
- *A-20: First floor plan of the north building, prepared by Aquatecture Associates, Inc., dated August 18, 2011, last revised January 6, 2012;*
- *A-21: Second floor plan of the north building, prepared by Aquatecture Associates, Inc., dated August 18, 2011, last revised January 6, 2012;*
- *A-22: Elevations for the south building, prepared by Aquatecture Associates, Inc., dated August 18, 2011, last revised January 6, 2012;*
- *A-23: First floor plan of the south building, prepared by Aquatecture Associates, Inc., dated August 18, 2011, last revised January 6, 2012;*
- *A-24: Second floor plan of the south building, prepared by Aquatecture Associates, Inc., dated August 18, 2011, last revised January 6, 2012;*
- *A-25: Elevations for the accessory structure and the brick wall/fence, prepared by Aquatecture Associates, Inc.;*
- *A-26: Photo board, containing 10 photographs (3 separate rows of photos) of the commercial areas of the Borough of Sea Girt, taken by the Applicant's representatives on or about March of 2012;*

- *A-27: A portion of the Borough's tax map (enlarged);*
- *A-28: Communication from the Monmouth County Planning Board, dated February 13, 2012;*
- *A-29: Conditional approval from the Monmouth County Planning Board, dated October 24, 2011;*
- *A-30: Sea Girt Village alternate trash/recycling plan, created by Menlo Engineering Associates, Inc., dated April 18, 2012;*
- *A-31: Sea Girt Village building coverage exhibit, prepared by Menlo Engineering Associates, Inc, dated April 18, 2012 (with aerial photographs);*
- *A-32: External/Internal rendering, with associated details, prepared by Menlo Engineering Associates, Inc.;*
- *A-33: No document submitted as A-33;*
- *A-34: No document submitted as A-34;*
- *A-35: Certification from Board member Karen Brisben, confirming that she listened to the tape/CD/DVD of a prior Planning Board Hearing on the matter;*
- *A-36: Position paper of Thomas Hirsch, Esq., relative to the applicability of the Residential Site Improvement Standards (RSIS), dated May 7, 2012;*
- *A-37: Concept building design rendition, prepared by Aquatecture Associates, Inc., dated May 11, 2012;*
- *A-38: Concept building design (view from differing angles), prepared by Aquatecture Associates, Inc., dated May 11, 2012;*
- *A-39: Concept site plan and building plans, prepared by Aquatecture Associates, Inc., dated May 1, 2012, consisting of 1 page;*
- *A-40: Board, containing a portion of the Borough's tax map, dated May 16, 2012;*

- *A-41: Review Memorandum from Leon S. Avakian, Inc., dated May 30, 2012;*
- *A-42: Listing Sheet (from the Multiple Listing Service) regarding 416 Washington Boulevard, Sea Girt, NJ;*
- *B-1: Review Memorandum from Leon S. Avakian, Inc., dated January 30, 2012;*
- *B-2: Correspondence from the Board Attorney, to Thomas Hirsch, Esq. and Edward Liston, Esq., dated March 9, 2012 (regarding quorum issues and the list of Objectors);*
- *B-3: Communication from the Board Attorney to the Board Secretary (with a copy to all Board Members), dated March 13, 2012 (enclosing the list of objectors, so as to identify any potential conflicts);*
- *No documents submitted as B-4 – B99;*
- *B-100: Certification from Board member, Lawrence Benson, confirming that he reviewed / listened to the transcript of the July 18, 2012 Planning Board meeting;*
- *B-101: Certification from Board Member, Susan Boriotti, confirming that she reviewed / listened to the tape / DVD of the July 18, 2012 Planning Board Meeting;*
- *B-102: Letter from the Board Attorney, to Counsel of record (enclosing the Board Planner's Report), dated July 27, 2012;*
- *B-103: Planning Report of the Board Planner, Richard Coppola;*
- *B-104: Planning Report prepared by Special Board Planner, Richard Coppola, dated July 24, 2012;*
- *B-105: Display Board of the Sea Girt Zoning Map;*
- *B-106: Display Board of the Borough of Sea Girt Land Use Map, dated December 8, 2008;*
- *B-107: Supplemental Review Memorandum prepared by Leon S. Avakian, Inc., dated May 30, 2012;*

- *B-108: Certification of Board Member Kathryn Matthews, confirming the review of the DVD / CD of the July 18, 2012 meeting transcript;*
- *O(Liston)-1: Communication from Edward F. Liston, Jr., to the Board Attorney, dated March 12, 2012 (regarding list of objectors);*
- *O(Liston)-2: Communication from Edward F. Liston, Jr., to the Board Attorney, dated March 16, 2012 (regarding objectors and formal representation of objectors);*
- *O-3: List of objectors represented by Edward F. Liston, Jr.,;*
- *O-4: Position paper of Edward Liston, Esq., (relative to the applicability of the Residential Site Improvement Standards (RSIS));*
- *O-5: Picture of a portion of the 5th Avenue property previously owned by the Applicant (or an agent thereof), taken by Mr. Thomas Jennings, on or about March of 2012;*
- *O-6: Picture of the porch of a 5th Avenue, Sea Girt, NJ property previously owned by the Applicant, and/or an agent thereof (taken on or about March of 2012);*
- *O-7: Picture of a collapsed stockade fence from a property previously owned by the Applicant and/or an agent thereof, taken on or about March of 2012;*
- *O-8: Picture of a 5th Avenue, Sea Girt, NJ property (torn screen), which site was previously owned by the Applicant and/or an agent thereof, taken on or about March of 2012;*
- *O-9: Photograph of the Mueller tract, taken by Edward Liston, Esq., on or about May of 2012;*
- *Affidavit of Service;*
- *Affidavit of Publication.*

TESTIMONY AND OTHER EVIDENCE PRESENTED ON BEHALF OF THE
APPLICANT

WHEREAS, testimony and other evidence presented on behalf of the Applicant and its representatives revealed the following:

- The Applicant herein consists of the following entities:

501 Washington Boulevard, LLC

503 Washington Boulevard, LLC

Sitar Sea Girt, LLC

900 Fifth Avenue, LLC

- The Principals of the said entities are William J. Sitar and William J. Sitar Holding Limited Partnership. (The William J. Sitar Holding Limited Partnership is owned by William Sitar and the William J. Sitar 2007 Insurance Trust.)
- One of the aforesaid Principals, William J. Sitar, who has lived in the Borough of Sea Girt for approximately 38 years, has significant experience/ involvement in the real estate industry.
- The aforesaid William J. Sitar is also a Principal of Sitar Realty, a Real Estate/ Property Management type of organization.
- Sitar Realty has been in existence since approximately 1976.
- The within Development Application involves 2 physically separated sites; namely:
 - A. The North Site
Block 76, Lots 1 & 2
 - B. The South Site

Block 77, Lots 16 & 17

- The said sites will hereinafter collectively be referred to as either the "Site", "Sites", "Property", or "Properties".
- The Applicant, or agents thereof, have owned the 4 individual properties/lots (respectively) since on or about 1994, 1998, 1998, and 2002/2004.
- The aforesaid properties are located within the Borough's existing Commercial Zone.
- The general characteristics pertaining to the existing sites include the following:

BLOCK 76, LOT 1

Street Address: 501 Washington Boulevard

Size of Lot: 11,250 S.F.

2012/Prior Uses: Barber Shop, Retail Store, and 3 apartments

BLOCK 76, LOT 2

Street Address: 503 Washington Boulevard

Size of Lot: 5,250 S.F.

2012/Prior Uses: Sitar Office Building

BLOCK 77, LOT 16

Street Address: No known street address per Tax List

Size of Lot: 10,750 S.F.

2012/Prior Uses: Small vacant structure / ice-cream store

BLOCK 77, LOT 17

Street Address: No known street address per Tax List

Size of Lot: 4,550 S.F.

2012/Prior Uses: Vacant residential dwelling

- Though located within the Borough's District 2 East Convenience Commercial Zone, the Applicant's representatives have indicated that they have had a difficult time in attracting and maintaining long-term commercial tenants at the site.
- The Applicant's Representatives advised that market changes over the last 5-10 years (from the 2012 testimony) have detrimentally impacted the viability of the Sea Girt commercial. According to the Applicant's representatives, the reasons for the general decline of the Sea Girt commercial area include the following:
 - General commercial development of the Route 35 corridor;
 - General development of the Sea Girt Mall;
 - General development of the Jersey Shore Premium Outlets (in the Borough of Tinton Falls);
 - General development of the Home Depot on Route 66, Neptune, NJ; and
 - General development of larger shopping districts in nearby Manasquan and nearby Spring Lake.
- According to the Applicant's representatives, the size of the Sea Girt commercial zone, the lack of parking associated with the same, and the concept of the Borough of Sea Girt not being a so-called "destination area" also impact/affect the viability of the Sea Girt commercial zone.
- The above conditions, per the Applicant's Representatives, affect the Applicant's ability to attract/ maintain long-term commercial tenants at the site - although leasing efforts were essentially paused while the within Development Application was being conceived/facilitated/planned/presented.
- While it is believed that restaurant food use could thrive in the Borough's commercial zone, the Applicant's Officials advised other commercial uses would not seem to be successful.

- In addition to the above, the Applicant's Officials advised that there is a lack of housing options available within the Borough. Specifically, long-term residents who want/need to downsize have no real viable options within the geographical confines of the Borough of Sea Girt.
- While such additional housing options exist in the surrounding communities, such housing options are not readily present within the Borough of Sea Girt.
- There is a need for such housing options because some long-time residents who are downsizing do wish to physically remain in the Borough of Sea Girt.
- Against such a backdrop, the Applicant's representatives would like to construct luxury apartments.

Specifically, the Applicant is proposing to construct two (2) 2 ½ story apartment buildings, with each building consisting of 8 apartments (for a total of 16 apartments). Each proposed apartment building will also contain associated off-street parking, lighting, and landscaping.

- There are 8 three bedroom units proposed and 8 two bedroom units proposed (in the entire/combined project).
- The proposed layout of the project includes the following:

NORTH SITE

Block 76, Lots 1 & 2

1st Floor Units

Master Bedroom

Master Bathroom

Bedroom #2

Kitchen

Dining Room

Living Room

Laundry Room

Bathroom

Walk-in-Closet

2nd Floor Units (+ partial ½ story)

Master Bedroom

Master Bathroom

Bedroom #2

Kitchen

Dining Room

Living room

Bathroom

Walk-in-Closet

Storage Area

Bedroom #3

Bathroom

SOUTH SITE

Block 77, Lots 16 & 17

1st Floor Units

Master Bedroom

Master Bathroom

Bedroom #2

Kitchen

Living Room / Dining Room

Laundry

Bathroom

Storage Area

Walk-In Closet

2nd Floor Units (+ Partial ½ Story)

Master Bedroom

Power Room

Bedroom #2

Living Room / Dining Room

Kitchen

Bathroom

Storage Area

Bedroom #3

Sitting Area

Bathroom

Walk-In Closet

- Each apartment would have 2 dedicated parking spaces.
- There would be no guest parking spaces for any of the apartment units.
- The proposed apartments would be rented on a year-round basis (i.e. not seasonally).

- The subject apartments would not be leased as group rentals – and Tenants would not be permitted to sub-lease the units.
- Subject to market forces, and per the 2012 testimony, it is anticipated that the Applicant would receive the following rents for the proposed apartments:
 - Approximately \$3,000.00 per month for the 2 bedroom units; and
 - Approximately \$3,500.00 per month for the 3 bedroom units
- As a long-time committed resident of the Borough, Mr. Sitar stated that he would never develop / oversee a project which would not promote the overall interests of the Borough.

PROCEDURAL MATTER

TRIAL COURT/APPELLATE COURT

VARIANCES

WHEREAS, the Application as presented requires approval for the following Variances:

North Site

Block 76, Lots 1 and 2

USE “d(1)” VARIANCE: Apartments are not a permitted use on the 1st floor in the subject Zoning District. In the within situation, the Applicant is proposing 4 apartments on the 1st floor. Therefore, a Use Variance is required so as to permit residential apartments on the 1st floor.

USE / “d(5)” VARIANCE: A permitted Use in the subject District is 2 apartments above a place of business. In the within situation, Applicant is proposing a total of 4 apartments on the 2nd floor. Therefore, a Density / “d(5) Variance is required to increase the density of the 2nd floor residential

apartments from a maximum permitted density of 11.616 apartment units per acre to 22.126 apartment units per acre, and provided that only two (2) units are permitted per each 7,500 S.F. lot and only if the units are located above permitted commercial uses.

*LINE WALL HEIGHT: Maximum 3 feet allowed; whereas, in the within situation, the Applicant is proposing a decorative curved brick wall along Washington Boulevard which has a height greater than 3 feet. Thus, a Variance is required. **Note:** The Applicant's representatives testified that the wall height*

*FENCE HEIGHT: Maximum 3 feet allowed; whereas the Applicant is proposing a decorative fence and brick pillars (along Washington Boulevard and 5th Avenue), which have a height greater than 3 feet. Therefore, a Variance is required. **Note:** The Applicant's representatives testified that the fence height would be modified so as to eliminate the said Variance.*

ACCESSORY USE NOT PERMITTED: The proposed storage accessory building is not listed in the Borough's Schedule of Limitations as a permitted accessory use. Therefore, a Variance is required.

South Site

Block 77, Lots 16 and 17

USE "d(1)" VARIANCE: Apartments are not a permitted use on the 1st floor in the subject Zoning District. In the within situation, the Applicant is proposing 4 apartments on the 1st floor. Therefore, a Use Variance is required to permit residential apartments on the 1st floor.

USE "d(5)" VARIANCE: A permitted Use in the subject District is 2 apartments above a place of business. In the within situation, the Applicant is proposing a total of 4 apartments on the 2nd floor. Therefore, a Density "d(5)" Variance is required so as to increase the density of the 2nd floor residential apartments from a maximum permitted density of 11.616 apartment units per acre to 22.126 apartment units per acre, and provided that only two (2) units are permitted per each 7,5000 S.F. lot and only if the units are located above permitted commercial uses.

*LINE WALL HEIGHT: Maximum 3 feet allowed; whereas, in the within situation, the Applicant is proposing a decorative curved brick wall along Washington Boulevard which has a height greater than 3 feet. Thus, a Variance is required. **Note:** The Applicant's representatives testified that the wall height would be modified to eliminate the said Variance.*

*FENCE HEIGHT: Maximum 3 feet allowed; whereas the Applicant is proposing a decorative fence and brick pillars (along Washington Boulevard and 5th Avenue), which have a height greater than 3 feet. Therefore, a Variance is required. **Note:** The Applicant's representatives testified that the fence height would be modified so as to eliminate the said Variance.*

ACCESSORY USE NOT PERMITTED: The proposed storage accessory building is not listed in the Borough's Schedule of Limitations as a permitted accessory use. Therefore, a Variance is required.

PUBLIC COMMENTS

WHEREAS, public questions, comments, and/or statements, in connection with the Application were presented by the following;

- Richard Gill
- Joe Marone
- Nancy Hurley
- Paula Cantarino
- Roger Marvinney
- Karen Cinkus
- Rita Terraciano
- Carolyn Carilli
- Steve Otto
- Pat Rafetto
- Missy Giegerich
- Mary Schambach
- Fred Rafetto
- Richard Sudowsky
- Kathleen North
- Jill Findley
- Chris Carhar
- John Giegerich
- Stan North
- Robert Beavis
- Jack DeCastro
- Sean Mulligan
- Mike Keefe
- Joe Marrone
- Chris Carhart

- Nick Walsifer
- Ria Terracciano

PROCEDURAL ISSUE

FORMAL FEE ARRANGEMENT BETWEEN THE OBJECTORS AND THE OBJECTING ATTORNEY

A procedural issue had been raised as to the nature by which the Objecting Attorney had been officially retained to represent the interest of the approximate 53 plus Objectors. Specifically, the Applicant's Attorney requested that notwithstanding a communication from the Objecting Attorney (in which the objecting attorney identified his clients) that the Board essentially require the Objecting Attorney to confirm that the Objecting Attorney had an official Attorney-Client relationship with the Objectors, as evidenced by a signed Fee Agreement, etc. Upon advice of the Board Attorney, the Board was not inclined to demand such information.

The reasons for the Board's / Board Attorney's determination in the said regard include the following:

- The Land Use Board is only authorized to review Land Use Applications, and the Land Use Board is not equipped to rule upon the merits or sufficiency of the nature of a legal agreement between members of the public and their Objecting Attorney.
- As a matter of policy, the Borough's Land Use Board does not rule upon, let alone comment upon, the professional relationship or financial relationship between individuals and their Attorneys.

- The Sea Girt Planning Board does not customarily review or rule upon such financial issues concerning Attorneys and their Clients.
- The Planning Board has no interest in becoming involved in, or even ruling upon, the nature of the financial relationship between an Attorney and his Clients.
- The nature of the financial relationship between the Objecting Attorney and the Objectors is of no relevance to the Planning Board.
- If the Objecting Attorney formally identifies the individuals whom he is representing, the Planning Board can, and will, in good faith, rely upon the same.
- In the event there was no signed Fee Agreement between the Objecting Attorney and some of his Objecting Clients, and if the same constitutes some type of violation of the Rules of Professional Conduct, the said issue is a potential issue for the Objectors and their attorney, but not the Planning Board.

PROCEDURAL HISTORY

LITIGATION

TRIAL COURT / APPELLATE COURT

The procedural history associated with the litigation process includes the following:

1. The Applicant submitted a Development Application to the Borough of Sea Girt, with respect to the following properties:

Block 76, Lots 1 and 2

Block 77, Lots 16 and 17

2. The Development Application sought approval to effectuate the following:
 - Demolition of existing buildings and associated onsite amenities; and
 - Construction of two 2 ½ story buildings, with each consisting of 8 apartments (for a total of 16 apartments)

with associated off-street parking, lighting, and landscaping.

3. After an extensive 8 months Hearing process (with approximately 8 Public Hearings) the Sea Girt Planning Board unanimously denied the subject Application.

4. A Memorializing Resolution was adopted thereafter.

5. The Applicant's representatives thereafter filed a Complaint Lieu of Prerogative Writ (the Superior Court, Law Division) appealing the Board decision as being arbitrary, capricious, and unreasonable.

6. Some Objectors to the Planning Board Application formally petitioned the Trial Court to intervene in the Case, and the said intervention was authorized.

7. The Applicant's representatives thereafter amended the Complaint so as to include a count against the Borough of Sea Girt. Specifically, the claim against the Borough of Sea Girt involved the allegation that the Borough's Building Coverage Ordinance was unconstitutional and / or otherwise unenforceable.

8. The Trial Court Litigation Case was essentially bi-furcated between a) the arbitrary / capricious claim against the Land Use Board and b) the constitutional claim (regarding the Building Coverage Ordinance) against the Borough of Sea Girt.

9. At the Trial for the Superior Court Law Division, appearances were entered by the following:

- Thomas Hirsch, Esq., on behalf of the Applicant
- Edward Liston Jr., Esq., on behalf of the Objectors / Interveners
- Kevin E. Kennedy, Esq., representing the Planning Board

10. After Trial on the arbitrary / capricious / unreasonable claim, the Trial Court affirmed the Planning Board denial of the Application. Essentially, the Trial Court ruled that the Planning Board decision on the matter was not arbitrary, capricious, or unreasonable.

11. When the bi-furcated claim against the Borough of Sea Girt was pending, the Borough of Sea Girt adopted an Ordinance amending / clarifying the then-existing Building Coverage Ordinance and, in furtherance thereof, the Borough of Sea Girt and the Applicant's representatives subsequently settled their differences and executed mutual Releases.

12. The Applicant's representatives thereafter filed a Motion with the Trial Court (Superior Court, Law Division) seeking to have the Land Use Application remanded and / or reconsidered (in light of the Borough's change to the Building Coverage Ordinance).

13. After oral argument on the matter, the Trial Court Judge denied the Applicant's request for a reconsideration / remand.

14. The Applicant's representatives appealed the matter to the Appellate Court.

15. Essentially, on appeal, the Applicant's representatives submitted a number of bases for the appeal – including the following:

- a. A claim that the Planning Board denial of the Application was arbitrary, capricious, and unreasonable, thereby worthy of judicial reversal;
- b. A claim that the Trial Court's affirmation of the initial Planning Board denial constituted reversible error;

- c. A claim that the Planning Board refusal to reconsider the matter after the Borough clarified the Building Coverage Ordinance was a mistake and constituted reversible error; and
- d. A claim that the Trial Court decision refusing the entertain / order a reconsideration of the matter or a re-hearing of the matter (on the Building Coverage issue) constituted reversible error.

16. As referenced above, among other things, the Applicant's legal representatives argued that in fairness, and for record-keeping purposes, the Planning Board should re-evaluate / re-hear the Application again, knowing that because of the Borough's change to its then-existing Ordinances, no Building Coverage Variance was required.

17. In the appellate process, the only parties involved included the following:

- Thomas Hirsch, Esq., representing the Applicant;
- Kevin E. Kennedy, Esq., representing the Sea Girt Planning Board

18. The oral argument before the Appellate Court occurred on or about December 12, 2016.

19. The 3 Judge Appellate Court Panel subsequently issued a written opinion.

20. The Appellate Court opinion provided the following in pertinent part:

...Applying this standard, we are constrained to conclude that the Trial Court mistakenly exercised its discretion by denying the Applicant's Motion for Reconsideration. As discussed above, the Board's discussion of the building coverage limitation permeated its analysis. A majority of the 7 members who voted on the Application specifically mentioned building coverage as a primary reason for denying the Application. In addition, the Board's November 28, 2012 Resolution repeatedly referred to the building

coverage limitation as an important justification for the Board's decision. The Trial Court also based its decision to uphold the Board's decision, at least in part, on its conclusion that the Applicant failed to meet the Building Coverage Requirements for the project.

However, as the Applicant established in its claim against the Borough, the building coverage limitation was never intended to apply to the commercial zone. This information was not available at the time of the Board's decision or even when the Trial Court upheld the Board's ruling. Thus, the legal premise underlying the Board's and the Court's initial decision, that there was a building coverage limitation for the commercial zone, was changed by subsequent events. Under these circumstances, we are satisfied that, in the interests of justice, the Court should have remanded this matter to the Board to re-examine its denial of the Application in light of this change in the legal underpinnings for its earlier decision.

In so ruling, we are of course mindful that the Board included a provision in its Resolution stating that if a Court later found that the building coverage limitation did not apply to the Applicant's project, the Board would have still denied the Application. As noted above, however, the Board's findings with regard to the building coverage limitation were inextricably intertwined with its analysis of its use and density zoning ordinances. Thus, on this record, it is impossible to reasonably conclude that the Board would have reached the same decision if the members knew that the Building Coverage proposed in the Applicant's proposal was not prohibited by the Borough's Ordinance. Therefore, a remand to enable the Board to consider this critical information was clearly in order.

Like the Trial Court, we appreciate the logistical difficulty of remanding this matter to the Board, particularly in a case where, as here, there is an extensive record for the Board to reconsider. However, our Supreme Court has provided guidance in this area. In Pizzo Manton Group the Township of Randolph, the Court stated that when a remand is required, we should remand the matter initially to the Trial Court (citations omitted). Remanding the matter to the Trial Court, rather than directly to the Board, will enable the

Trial Court “to determine the nature and scope of any Hearing to be undertaken by the (Board) to reassess or to recast its factual findings in light of the” Borough’s confirmation that the building coverage limitation does not apply to a commercial Zone. At a minimum, the Board must make new Findings of Fact and Conclusions of Law concerning the Application now that it knows that the building coverage limitation is inapplicable.

Prior to remanding the matter to the Planning Board, the Trial Court should conduct a Case Management Conference with the parties’ Attorneys and map out a procedural course of conduct for the Board to follow on remand. As the Court stated in Pizzo, the Board’s reconsideration of an Applicant’s proposal on remand need not be confined to the record and therefore, the possibility that additional evidence may be required by the Board or sought or tendered by the Applicant should not be automatically foreclosed (citations omitted). Instead, these “are matters that the Trial Court may settle on remand.” (Citations omitted.) Likewise, the potential contours of any potential role of any Objectors on remand before the Board is referred to the Trial Court and Counsel for consideration...

In some, we reverse the Trial Court’s decision denying the Applicant’s Motion for reconsideration, and remand this matter in the first instance to the Trial Court to determine the process and procedures the Planning Board should follow when it reviews the Application anew. In remanding this matter, we do not suggest a preferred result, but only that the Board reconsider the matter on the basis of the new information concerning the inapplicability of the building coverage limitation in the Commercial Zone, and issue a new decision which fully articulates its Findings of Fact and Conclusions of Law. Any review of that new decision shall be pursued initially in the Trial Court and in a new action in Lieu of Prerogative Writs.

Reversed and remanded. We do not retain jurisdiction.

21. Pursuant to the aforesaid Appellate Court Opinion, Counsel for the Applicant and Counsel for the Planning Board appeared before the Trial Court for a Case Management Conference, so that the logistics and timeframe for the Remanded Hearing Process could be reviewed / discussed. The scope and parameters of the of the Remanded Hearing Process were ultimately set forth in a Consent Order dated on or about March 1, 2017.

22. Against the aforesaid backdrop, the Appellate Court Remanded Hearing occurred on May 17, 2017.

SUPPLEMENT EVIDENCE / EXHIBITS
(REMANDED HEARING OF MAY 17, 2017)

At the May 17, 2017 Remanded Hearing, the Board reviewed, considered, and analyzed the following documents which were officially marked into the record as Evidence:

- Order of the Superior Court (Docket No. MON-196-13), dated on or about January 28, 2015, introduced into Evidence as B-1000;
- Opinion of the Appellate Court, 501 Washington Boulevard, LLC, et al vs. Sea Girt Planning Board, et al (Docket No.: A-2993-14T3, decided January 3, 2017, introduced into Evidence as B-1001;
- Order (parameters of the Remanded Hearing), dated on or about March 1, 2017, introduced into Evidence as B-1002;
- Correspondence from the Board Attorney to the Trial Court, dated April 10, 2017, introduced into Evidence as B-1003;
- Certification of Board Member Eileen Lazlo, confirming that she listened to the tapes and / or reviewed the transcripts of the entire 2012 proceedings, introduced into Evidence as B-1004;

- Certification of Board Member Carla Abrahamson, confirming that she listened to the tapes and / or reviewed the transcripts of the entire 2012 proceedings, introduced into Evidence as B-1005;
- Certification of Board Member Ray Petronko, confirming that he listened to the tapes and / or reviewed the transcripts of the entire 2012 proceedings, introduced into Evidence as B-1006;
- Certification of Board Member Jake Casey, confirming that he listened to the tapes and / or reviewed the transcripts of the entire 2012 proceedings, introduced into Evidence as B-1007;
- Certification of Board Member Karen Brisben, confirming that she listened to the tapes and / or reviewed the transcripts of the entire 2012 proceedings, introduced into Evidence as B-1008;
- The Applicant's Public Notice for the Remanded Hearing, introduced into Evidence as B-1009;
- Affidavit of Service;
- Affidavit of Publication.

FINDINGS OF FACT

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Sea Girt, after having considered the aforementioned Application, plans, evidence, and testimony (in 2012 and 2017), that the Application is hereby **denied**.

In support of its decision, the Planning Board makes the following Findings of Fact and Conclusions of Law:

1. The Sea Girt Planning Board has proper jurisdiction to hear the within matter.
2. The subject properties are identified as follows:

Block 76, Lots 1 & 2

Block 77, Lots 16 & 17

3. The subject properties are located within the Borough's District 2 East Convenience Commercial Zone.

4. The two subject properties are located in the northwest corner and southwest corner (respectively) of the Washington Boulevard and Fifth Avenue intersection.

5. The said two properties are physically separated by Washington Boulevard.

6. The general description of each of the said parcels is set forth elsewhere herein.

7. The Applicant proposes the following:

- Demolition of the existing buildings and associated on-site amenities; and
- Construction of two (2) 2 ½ story apartment buildings, with each building consisting of 8 apartments (for a total of 16 apartments) with associated off-street parking, lighting, and landscaping.

8. Such an Application requires Site Plan Approval, Use / "d(1)" Variance Approval, Density "d(5)" Variance Approval, and potential Bulk Variance Approval.

9. The Sea Girt Planning Board, as a duly organized combined Land Use Board, is statutorily authorized to grant the requested relief and thus, the matter is properly before the said entity.

10. With regard to the Application, and the requested relief, the Board notes the following:

- The Sea Girt Master Plan was last adopted during 1978 and the Master Plan was officially re-examined (in accordance with N.J.S.A.40:55D-89) during 1995, 2001, and 2008. As such, the Borough's Master Plan is current, as per the substantive and procedural requirements of the New Jersey Municipal Land Use Law.
- In light of the above, the Borough's Zoning Ordinances are entitled to a presumption of validity, per prevailing New Jersey Case Law.
- The 2008 Master Plan Re-Examination Report and the 2001 Re-Examination Report, expressed 2 concerns; namely:
 - a. The relatively recent development of single-family detached dwellings and accessory buildings being out of scale / character with the existing residential development within the Borough; and
 - b. The potential redevelopment of the large (approximately 168 acre) National Guard property.

As such, it is clear that no Master Plan-related documents have recommended any Zoning changes with respect to the subject District 2 East Convenience Commercial Zone.

- As indicated, the subject property is located in the Borough's District 2 East Convenience Commercial Zone. Per the Borough's Zoning Ordinance, the purpose of the said Zone is "to preserve the existing primary area of commercial concentration in the Borough." The within Application (with its non-conforming density) will not advance the aforesaid purpose, as no commercial units are proposed.
- As previously indicated, Borough Ordinance (Section 17-4) (Schedule of Limitations) identifies that the purpose of the Borough's District 2 East Convenience Commercial Zone is "to preserve the existing primary area of commercial

concentration in the Borough”. The Board finds that the Applicant’s proposed commercial-free development is inconsistent therewith.

- Approving a 100% residential development at the site, as proposed herein, will not preserve the existing primary area of commercial development within the Borough. Rather, approval of the within Application will eliminate a significant portion of the Borough’s existing commercial area.
- As indicated, the prevailing Zoning Ordinance contains the stated purpose of preserving “the existing primary area of commercial concentration in the Borough”. Because the Borough Council of the Borough of Sea Girt never changed or modified the said Ordinance, or purposes associated therewith, the Board finds that the said purpose remains valid, with a presumption of validity.
- The Applicant’s proposed 100% residential development (and corresponding lack of required commercial use on the first floor) directly contradicts the stated purpose of the Ordinance, which is to preserve the Borough’s existing commercial concentration.
- Approval of a 100% residential development (and corresponding lack of required commercial use on the first floor) will not preserve the existing primary area of commercial concentration within the Borough.
- Though the Applicant’s representatives testified about the beautiful aesthetic appeal of the proposed buildings, and the importance of providing Borough residents with a variety of housing options, Board Members were troubled by the fact that the subject Application was so directly and fundamentally at odds with the Ordinance goal of preserving “the existing primary area of commercial concentration” within the Borough.
- The Applicant’s proposed lack of required commercial use on the first floor at the two sites is not consistent with the Ordinance goal of preserving the existing commercial concentration within the Borough.

- The Applicant's proposed lack of required commercial use at the site / sites will not advance the Ordinance goal of preserving the existing commercial concentration within the Borough.
- The Applicant's proposed lack of required commercial use at the site / sites, will undoubtedly detract from the Ordinance goal / purpose of preserving the existing commercial concentration within the Borough.
- The Applicant's proposed lack of required commercial use in conjunction with the proposed development is unequivocally inconsistent with the Ordinance goal of preserving the existing commercial concentration within the Borough.
- As indicated, the Applicant's proposed lack of commercial use in conjunction with the Application is not consistent with the Ordinance goal of preserving the existing commercial concentration within the Borough. Moreover, more likely than not, approval of commercial-free uses at the site / sites will forever remove the potential for any return of commercial uses at the site / sites.
- Had the Borough Council wished to eliminate the preference for first floor commercial uses at the site, the Borough Council of the Borough of Sea Girt could have adopted a revised or superseding Zoning Ordinance. However, the governing body of the Borough of Sea Girt never changed the Ordinance goal of preserving the existing commercial concentration with the Borough.
- The prevailing Ordinance is unequivocal in its stated purpose of preserving "the existing primary area of commercial concentration in the Borough" – and despite the testimony presented by the many qualified witnesses on the Applicant's team, the Applicant's representatives could never successfully justify an approval which is so clearly inconsistent with the known / documented commercial-inviting purpose of the subject Zoning Ordinance.
- The testimony and evidence indicated or otherwise suggested that approval of the within Applicant's commercial-free application would likely / essentially

eliminate approximately 14% of the Borough's existing commercial area – clearly inconsistent with the Ordinance goal of preserving the existing commercial concentration with the Borough. Whether the actual 14% calculation is completely accurate, or some other similar number, the Board finds that the loss of existing/potential commercial uses within the Borough (associated with the within Application) will be significant.

- The stated purpose of the subject Zoning Ordinance is important, meaningful, clear, and unequivocal in its intent. Towards that end, the Board finds that the Applicant's representatives did not provide legally sufficient or legally compelling testimony which would justify such a radical departure from the clear intent of the Zoning Ordinance.
- As indicated, the prevailing Ordinance states an intent of preserving the existing primary area of commercial concentration within the Borough – and the Applicant's commercial-free proposal does not advance such a goal. The said issue was very troubling to many Board Members. Moreover, the failure of the Applicant's representatives to successfully address / assuage the aforesaid concerns fatally compromised the Application.
- The stated zoning purpose of preserving the existing primary area of commercial concentration within the Borough is important – and approval of the within Application would represent an outright repudiation of the said Zoning Ordinance.
- Approval of the within Application will frustrate the stated goal of the subject Ordinance, which encourages the preservation of the Borough's existing primary area of commercial concentration.
- The Board finds that approval of the proposed commercial-free application will not only frustrate the purpose of the subject Zoning Ordinance for today, but will also frustrate the stated intent of the Ordinance for years / generations to come.

- Despite testimony which, at times, was interesting, informative, and articulately presented, the Applicant's representatives did not convince even 1 member of the Board that the non-permitted commercial-free application would advance the overall interests of the Borough of Sea Girt.
- Despite the testimony from the Applicant's representative which was, at times, interesting, informative, and articulately presented, the Applicant's representatives did not convince even 1 member of the Board that the within proposal represents a better overall zoning alternative for the Borough of Sea Girt.
- The Board finds that the Applicant's representatives did not provide legally sufficient or legally compelling testimony / evidence justifying the outright frustration/repudiation of the stated purpose of the Ordinance, which references the goal of preserving the existing primary area of commercial concentration within the Borough. In the absence of such testimony and evidence, the Board Members were not inclined to approve the Application.
- The Applicant's representatives, at times, suggested, or otherwise referenced, that the Application presented was a conforming Application. Respectfully, the within Application is not conforming. That is, as indicated, the Application does not comply with prevailing use requirements, and the Application does not completely comply with prevailing density requirements. Thus, the Board respectfully finds that it is inaccurate to suggest that the Application is conforming (despite some positive features otherwise associated with the Application).
- Though the Applicant's representatives suggest that the loss of the Borough's existing commercial spaces in conjunction with the subject Application are not significant, the Board finds that the loss of existing/potential commercial space (associated with the within Application) is, in fact, significant, material, and troubling.
- Other conforming development options could likely simultaneously fulfill the goal / intent of the Borough's Zoning Ordinance (to preserve existing commercial space) and

provide new housing stock within the Borough, albeit not at the excessive non-conforming level proposed by the Applicant's representatives herein.

- In the opinion of some members of the Board, a proposal which preserved existing / potential commercial uses at the site (as required by the prevailing Zoning Ordinance) would have made some aspects of the Applicant's proposal more acceptable, and simultaneously, less offensive.
- More stringent compliance with the goals / purposes / intent of the Borough's prevailing Zoning Ordinance would, in the opinion of some Board Members, improve the overall merits of the Application (and correspondingly minimize some of the more offensive elements of the proposal).
- At its base level, the within commercial-free application is at cross-purposes with the stated Ordinance intent of preserving the Borough's existing commercial area of concentration. The said issue was a major / important concern for the Board – and, in large part, the existence of the said inconsistency is a basis for the within denial.
- Respectfully, the Applicant's representatives seemed to suggest a rather cavalier approach towards ignoring the stated intent of the Ordinance, which is to preserve the Borough's existing commercial base – solely because of the Applicant's past difficulty in successfully obtaining / maintaining commercial tenants at the site. While the Applicant's frustration in securing / maintaining commercial tenants at the site is potentially understandable, the Board is not willing to so cavalierly approve the within Application, or any Application which so clearly violates the unequivocal intention / goal of the Zoning Ordinance, which is to preserve the Borough's existing commercial base.
- Respectfully, the Applicant's representatives did not seem to recognize, realize, or appreciate the importance and significance which Board Members place on the stated goal of the Ordinance (which is to preserve the Borough's existing primary area of commercial concentration).
- The Board acknowledges that given the nature of post 2012 Governing Body changes to the prevailing Zoning

Ordinances, the Applicant does not need approval for a Building Coverage Variance.

- Though the elimination of the need for a Building Coverage Variance is certainly a positive feature associated with the proposal, the same does not, in and of itself, justify the commercial-free nature of the proposal or the extraordinary relief otherwise required by the Application.
- The Applicant's representatives repeatedly suggested that there was no testimony presented which challenged, or otherwise countered, the testimony presented by the Applicant's representatives. Respectfully, the Board Members do not agree with such an assertion. Rather, the Board specifically finds that at times, and on some issues, there was sufficient / credible testimony / evidence / arguments presented in connection with the opposition to the Application.
- Moreover, in conjunction with the above point, the Board is aware that when presented with competing professional testimony, Board Members can, within reason, determine which testimony, or portions thereof, to endorse/accept.
- The Application as presented requires Use / "d" Variance relief for density. In the within situation, the density component of the Application is somewhat complicated. As indicated, a permitted use in the subject zoning district would include 2 apartments above a place of business. In the within situation, the Applicant's representatives are proposing a total of 4 apartments on the second floor (of the Lot 1 / 2 site and 4 apartments on the second floor of the Lot 16 / 17 site). Clearly, at a minimum, density of the second floor apartments for both sites does not conform with what is allowed.
- Likewise, in conjunction with the above, point, the Board is aware that each building will also contain 4 apartments on the first floor (notwithstanding that the same are not permitted). The Board finds that the total number of dwelling units proposed for the first floors of the site, the second floors of the site, and overall number, contribute / complicate the density issues.

- The Applicant's representatives suggest that the density should not be a concern to the Board Members because the within Application involves 2 separate sites, which are consolidated. Respectfully, the Board does not fully endorse such an argument, as the Application as presented by the Applicant's representatives, does, in fact, require density approval. Moreover, the Board notes that as part of the within Application, as proposed by the Applicant, the Lots are to be consolidated, and no density benefits should necessarily flow from the same.
- The Applicant's representatives suggest that the density relief necessitated in conjunction with the within Application is more technical in nature than substantive. Respectfully, the Board does not endorse or accept such an argument.
- The Borough's Prevailing Ordinance contains the following stated purpose:

"To preserve the existing primary area of commercial concentration in the Borough and permit such uses that meet daily and other convenience needs of the Borough within the zoning district area designated in order to be compatible with the overall low density residential character of the Borough. It is intended that major shopping and commercial needs such as those relying on major highway access or serving a regional market be met in locations other than the Borough where more intensive business activities are already established or where major tracts of land are available to develop modern shopping facilities."

The Board finds that the non-conforming density referenced herein is specifically at odds with the "low density" residential character of the Borough, as referenced in the Ordinance.

- A non-conforming density, and the extent of the non-conforming density, is and was troubling for some Board Members.

- The Applicant's representatives did not provide legally sufficient or legally compelling testimony justifying the non-conforming density relief proposed herein.
- The Applicant's representatives suggested that the subject properties were particularly suited to the proposal because of the following reasons:
 - The properties are corner Lots abutting Fifth Avenue at the "Gateway" into the Convenience Commercial 2 East Zoning District;
 - Each of the properties is bordered (at its rear) by residential uses in the District 1 East-single family Zone;
 - The proposed apartment units are permitted on the upper floor, but not at the proposed density;
 - The proposed apartment buildings would infuse more people within walking distance of the existing nearby commercial uses;
 - There is no current "commercial" demand at/for the subject site.
 - The existing Zoning District Regulations are outdated and need to be updated; and
 - The existing development on the subject property is not aesthetically appealing – particularly compared to the proposed / brand-new apartment buildings.

The aforesaid reasons, individually and/or in the aggregate, do not justify the extensive relief sought. Nor do the aforesaid reasons justify the outright frustration of the stated goal of the ordinance, which is to preserve the existing commercial concentration within the Borough.

- The Board notes that, per the criteria listed above, similar arguments could be made for apartment building development on other lots / sites as well. That is, the

Applicant's aforesaid arguments could be made for the development of numerous other properties as well.

- Based upon the information presented by the Applicant's representatives, and based upon information presented by the public, the Board is not convinced that there is no demand for commercial uses at the site.
- The Board notes that even if there is no recurrent market demand for commercial uses in the subject Commercial Zoning District at this time (and the Board does not endorse such an argument), the market may change in the future.
- It is possible that since the 2012 testimony from the Applicant's representatives that the Applicant's interpretation of the commercial real estate market may have changed - and the Applicant's representatives did not provide any evidence in the said regard.
- The Board notes that economic markets are cyclical and/or temporary, but that any Use / "d" / Density Variances granted by the Board are permanent.
- The Board notes that any approval granted herein will permanently run with the land – regardless of the current or prevailing market for such uses.
- Respectfully, the fluid and ever-changing market should not be, and cannot be, a basis for the permanent granting of a Use Variance / Density Application, or for the erosion of the Borough's existing commercial base.
- The New Jersey Municipal Land Use Law and the prevailing Case Law do not require, or even encourage, Land Use Boards to consider market demands for permitted uses (as a basis for the granting of a Use Variance Application).
- The alleged current market demand for commercial uses at the site is not a sound basis for the Board to deviate from the Requirements of the Borough's Prevailing Zoning Ordinance.
- The Board notes that there could be a variety of significant or potentially significant economic, personal, business, and/or physical reasons why the Applicant's representatives have not been more successful in attracting / maintaining

long-term commercial tenants at the site. Specifically, representatives of the Objectors questioned whether the Applicant's difficulty in attracting / maintaining such long-term Tenants resulted from the condition of the existing properties, the condition of the the structures existing thereon, and/or the Applicant's responsiveness to the needs of its Tenants.

- Economic factors associated with the temporary rise / fall of the commercial real estate market cannot be the basis for a) the granting of a Use Variance or b) the outright frustration of the stated purpose of the prevailing zoning ordinance.
- Allowing an Applicant to significantly depart from the Prevailing Zoning Regulations based upon the temporary rise / fall of the commercial real estate market is not a sound basis upon which Land Use Board decisions should be made.
- A flawed extension of the Applicant's argument would suggest that if there were a thriving or active / attractive market demand for commercial units (in the subject District), then, in that event, any Use Variance Application (for all residential use at the site, such as proposed herein) should be automatically denied, regardless of the testimony / evidence presented. The Board rejects such an implication as well.
- The Applicant's argument simultaneously suggesting that a) there was little market demand for commercial uses in the Zone and b) the proposed apartment buildings would generate people to support nearby commercial uses seems somewhat incongruent.
- The Applicant's representatives suggested that the current Zoning Regulations are outdated and need to be refined / revised. While the Board does not officially endorse, or even agree with, such a concept, such an argument would tend to support a potential Borough-Council Re-Zoning of the property – and not the grant of a Use Variance / Density Application.
- The Borough's Master Plan was last re-examined during 2008 – and had the governing body wished to change the Regulations so as to address the Applicant's market-related

arguments, the governing body could have done so. However, notwithstanding an opportunity to do so, the Borough Council of the Borough of Sea Girt did not change the permitted uses / densities permitted in the Zone so as to allow, sanction, or otherwise encourage the Applicant's proposed commercial-free use / density.

- As referenced, the Applicant's witnesses suggested that the existing structures on the site are not attractive – and that approval of the within Application would result in the construction of aesthetically appealing buildings / structures. Aesthetic improvements alone are not a sufficient basis to grant a use Variance / Density Application.
- While a purpose of zoning in the N.J. Municipal Land Use Law is “to promote a desirable visual environment through creative development techniques and good civic design arrangements”, the Board notes that the Applicant's representatives could also improve the aesthetic appearance of the site / sites by developing permitted/conforming uses at the site / sites (or more conforming uses at the site.)
- The Applicant (and / or its agents / related entities) have owned the subject properties for varying amounts of time, commencing in or about 1994 - and presumably, had the Applicant's representatives desired to do so, the Applicant's representatives could have undertaken efforts over the years to improve the aesthetic appearance of the site / sites.
- If the Board were to grant a significant Use Variance / Density Application because of aesthetic improvements alone, such a philosophy could, under certain circumstances, actually encourage owners (and / or future would-be Applicants) to allow their respective properties to fall into disrepair (as a so-called bargaining chip during any Development Application Process.)
- While the Board Members agree that it is important / appropriate for the “Gateway” properties within the Borough to be aesthetically appealing, the “Gateway” properties can be developed so as to host conforming uses, at permitted densities, and in aesthetically appealing fashions.
- The Applicant's representatives suggested that there is no demand for commercial uses on the subject property – as

evidenced by the fact that there has apparently been no commercial development in the subject Zone during the 8 years (prior to the 2012 Hearings). The Board notes that there could be a whole host / variety of social, commercial, economic, geographic, and market factors for such a phenomenon – and the same cannot be a basis for the granting of a Use Variance / Density Application.

- Additionally, though the Applicant's and its representatives maintain that there has been no new commercial development in the Commercial Zone during the 8 year period (prior to the 2012 Hearings), the Applicant's representatives failed to recognize the number of individuals / companies who have effectuated renovations and upgrades to existing commercial uses (in the commercial zone) in a compliant / conforming fashion (without the need for having to obtain formal Municipal approval).
- In conjunction with the above point, the Board equally notes that a history of successful commercial development / Applications in the area over the 8 year period (prior to the 2012 Hearings) would not be a basis to automatically or unilaterally deny all non-conforming residential proposals (such as that submitted herein).
- The Applicant's representative did not provide sufficient testimony (from a planning perspective) as to how the creation of a non-conforming commercial-free use at the site (at a non-conforming density as well) would affect the surrounding neighborhood – and, in the absence of the same, members of the Land Use Board were not inclined to support the Application.
- The Board very much appreciates the appealing design / architectural features of the proposed buildings. While such attention to detail could clearly improve the overall appearance of the site, members of the Land Use Board did not feel that aesthetic improvements alone would justify the creation of a non-permitted commercial-free use at the site (at a non-conforming density).
- The Land Use Board respectfully submits that the Applicant could develop the site (and improve the overall appearance of the same) without having to create a non-conforming use / density.

- The Board respectfully submits that the subject site could also be renovated / upgraded / improved / developed in a fashion which conforms, or more closely conforms, with the Prevailing Zoning Regulations.
- The Board is of the opinion that the site could be developed in a matter which complies with, or more closely complies with, the Prevailing Zoning Regulations. For instance, the proposed buildings could be reduced in size / scope, so as to potentially reduce the overall density and commercial uses could be added to the first floors so as to satisfy the stated purpose of the Ordinance.
- The Board has reviewed the testimony / evidence submitted with respect to the Density Variance.

For the reasons set forth herein, the Board is of the opinion that the subject site cannot accommodate the proposed density.

- Approval of the within density will impair the intent and purposes of the Borough's Master Plan.
- Given the nature of the surrounding uses, the proposed density is not appropriate for the development site.
- The subject site cannot sufficiently accommodate the development proposed herein.
- Approval of the within density would impair the character of the existing area.
- The non-conforming use / density will have a negative impact on adjoining properties.
- Some of the Objector's representatives and / or Objectors suggested / inferred that the proposed use would be devastating for the Borough of Sea Girt, and forever / detrimentally change the nature / character of the Borough of Sea Girt. Based upon some of the testimony / evidence presented, the entire Board does not endorse, or even agree with, such a contention. There are elements of the proposed use which are potentially positive and beneficial. However, the overall density and scope of the non-permitted proposal

is simply out of character for the area. Likewise, as indicated, the erosion of the Borough's commercial base was and is at odds with the stated goal/purpose of the zoning ordinance.

- Development of the site as proposed herein, at a non-conforming density would compromise the spirit, intent, and integrity of the Borough's Master Plan / Zoning Ordinances.
- The Applicant's non-permitted proposal is just too large – as evidenced by the Applicant's failure to satisfy the Borough's Prevailing Use / Density Requirements.
- There is nothing sufficiently unique about the subject properties which would justify the excessive density, and/or the non-conforming use as requested herein.
- The Board appreciates the passion / commitment / dedication of the proposed developer – and the within denial is not to be viewed as an attack on the aforesaid commitment. Rather, the Board finds that the commercial-free nature of the proposal and the excessive density will have an adverse impact on the Borough of Sea Girt. That is, given the stated purpose of the Ordinance, which is to preserve the Borough's existing commercial base, approval of the within commercial-free Application will not be consistent with the Zoning Ordinance / Master Plan. Moreover, the Board finds that approval of the within Application will also detrimentally affect the vitality of the Borough's existing commercial base for years / generations to come.
- Some Board Members were also concerned that an approval of the commercial-free Application could potentially contribute to a so-called creeping erosion of the Borough's existing commercial base.
- The Board Members recognize the resources the Applicant's representatives have contributed towards the Application over the last several years. Unfortunately, however, the Board cannot consider such economic factors as a basis for approving a non-permitted use and a non-permitted density.
- The Board also acknowledges that there has been approximately 5 years of Trial Court / Appellate Court

Litigation involving the proposal, procedural issues associated therewith, and substantive issues associated therewith. Though, for obvious reasons, the Board Members do not welcome litigation, Board Members recognize the cost, stress, uncertainty, time, and risk all litigants are exposed to throughout the litigation process.

- The existence of the aforesaid litigation cases is not a basis for the Board's denial of the Application. Rather, the Board decision to deny the Application is grounded in the detrimental effects associated with the non-conforming use, the non-conforming density, and the associated erosion of the Borough's existing commercial base.
- As required by the most recent Trial Court Order, and as required by New Jersey Municipal Land Use Law, all new Board Members (who were not present for the 2012 Hearings dutifully reviewed the tapes and / or transcripts of the voluminous 8 months of Hearings) from 2012. The said review of the 2012 tapes / transcripts underscores the Board Members' individual / institutional commitment to the Applicant, the public, and the land development process.
- The Borough of Sea Girt is a special Town, nestled along the Atlantic Ocean, with quaint and unique features – and like most communities, the Town has a Residential Zone and a Commercial Zone. The Residential / Commercial mix has helped shape the characteristics of the community. It is feared that approval of the within Commercial-free Application will lead to an erosion of the Borough's existing commercial base, directly contrary to the stated purpose of the Prevailing Ordinance. Though the Borough's existing commercial base does not necessarily rival the commercial bases of some other nearby Municipalities, the continued existence of the Borough's commercial base is very important, as reflected in the expressed language of the Prevailing Zoning Ordinance.
- The Borough's Prevailing Ordinance suggest a need for existing commercial uses in the Borough to serve the needs of Borough residents / guests. However, the within Application will not advance such a goal / intent.
- The Applicant's representatives testified as to the fact that the proposed buildings will comply with Prevailing Bulk

Setback Requirements, the site will comply with the Prevailing Parking Requirements as established by the Residential Site Improvements Standards, and that the proposal will comply with the Borough's Prevailing Coverage Requirements. The Board appreciates the said facts, and appreciates compliance with Prevailing Bulk Zoning Requirements, a familiar refrain uttered by many Land Use Board Members when they review other Applications submitted to the Board. However, in the within situation, the Applicant's representatives have failed to sufficiently address / assuage the Board / Public concerns regarding the need to preserve the Borough's existing commercial base. Board Members and the public were also concerned about the erosion of the commercial base associated with the within Application. As indicated, the Applicant's representatives did not provide sufficient testimony as to the overall impact of approving a commercial-free development in a Commercial Zone. The said failure resulted in all Board Members unanimously deciding to deny the Application.

- Throughout the Public Hearing Process, the Applicant's representatives essentially suggested that they have tried to develop / cultivate what the Ordinance allows – i.e. commercial uses. That is, the testimony from the Applicant's representatives suggested that the Applicant's officials tried, in good faith, to rent / lease the properties over an extended period of time, but were unsuccessful in doing so. The Testimony indicated that the Applicant could not secure long-term commercial Leases. Respectfully, the same is not a basis for granting a Variance for non-conforming use / non-conforming density.
- The Applicant's representatives suggest that residential use (as proposed herein) is less intense than some other permitted commercial uses. As such, the Applicant's representatives argue that the Application should be routinely approved. Respectfully, the Board does not accept / endorse such an argument. If the only issue at hand were intensity of use, the Applicant's argument, as aforesaid, would appear, at least on paper, to be a bit more persuasive. However, as indicated, the Application is not only about intensity / density (though intensity / density are important factors). As indicated many times herein, a major concern with the Application, is that, contrary to the stated goal of the

Ordinance, the developer is not proposing actions which will tend to preserve the Borough's existing commercial base. Rather, as indicated, approval of the within Application will, quite emphatically, diminish / weaken the Borough's existing commercial base, in direct contravention of the stated purpose of the Ordinance.

- Throughout the Public Hearing Process, the Applicant's representatives suggested that, among other things, approval of the within Application would eliminate several existing zoning violations associated with the various sites. While the Board Members certainly appreciate applications which tend to minimize or otherwise reduce existing zoning violations, the said fact, in and of itself, is not a basis to approve a Use / Density Application. Moreover, the said issue does not justify an excessively dense Application. Moreover, the said factor does not justify the Applicant's desire to outright reject / ignore / thwart the stated purpose of the Prevailing Zoning Ordinance, which is to preserve the Borough's existing commercial base.
- The Applicant's representatives did not supply sufficient testimony / evidence regarding Affordable Housing Obligations associated with the site – and how the same would be satisfied.
- The Application as presented (with an excessive density) does not represent a better Zoning alternative for the Borough of Sea Girt and / or the residents thereof. Additionally, some members of the Board were of the opinion that a more compliant density could dramatically improve the overall compatibility / acceptability of the proposal.
- Per the testimony / evidence presented, it appears that the excessive density is required in order to make the overall development more economically appealing. While the Board Members can appreciate such a concept, in theory, the same is not, and cannot, be a basis for granting the excessive relief requested herein.
- Among other things, the Applicant's representatives did not provide sufficient testimony / information as to the nature / existence of similar non-conforming densities in the area –

and, in the absence of the same, the Board Members were not inclined to approve the Application.

- The Applicant's proposed non-conforming use / density would presumably be better suited for a larger tract of land, which could more easily accommodate the proposed non-conforming use, and the associated by-products of the same.
- Though some members of the Board conceptually recognize the merits of the proposed apartment use, the excessive density was not justified.
- The Applicant's representatives did not provide sufficient testimony / evidence to justify the excessive density requested herein.
- To approve the excessive density under the within circumstances (and without sufficient reasons to justify the same) could create a negative precedent for development within the Borough.
- The Applicant's representatives tend to suggest that because the proposed residential apartment use is less intense than many other permitted commercial uses, that the Use Variance Application should be automatically approved. However, such an argument:
 - Does not recognize the stated Master Plan purpose / goal of preserving "the existing primary area of commercial concentration within the Borough";
 - Does not sufficiently recognize that the Applicant's proposal constitutes a non-permitted non-conforming use;
 - Does not justify the excessive density proposed by the Applicant;
 - Does not constitute a legally sanctioned or recognized basis for the granting of a Variance Application;

- Does not recognize the importance of having compatible and appropriately scaled uses constructed in appropriate locations; and
- Would wrongly suggest that less intense residential use should be permitted in any zone and at any density.
- The Board notes that under the prevailing Zoning Regulations, the Applicant would be entitled to have 2 apartments on each of the 2nd floors of the 2 sites (over permitted commercial uses), for a total of 4 apartments (as of right). However, in the within situation, the Applicant is proposing a total of 16 apartments – which represents a significant % increase over that which is permitted (as of right).
- The excessive density proposed herein will have a detrimental impact on the quality of life for the residents of the Borough of Sea Girt.
- Density is one way in which a Municipality can ensure that a particular development site does not overpower a particular neighborhood. At the excessive density proposed herein, the Board is of the opinion that the Applicant's proposal would, in fact, overpower and adversely change the neighborhood.
- During the Public Hearing Process, the Applicant's representatives and Objector's representative differed as to whether the granting of the requested Variances would essentially constitute a re-zoning of the subject properties. The Zoning Board representatives / members reviewed the matter extensively, and were guided by the information set forth in the New Jersey Zoning and Land Use Administration Book, as authored by William M. Cox (2012 Edition). Specifically, the said reference guide provided the following information / guidance on the topic:

The basic inquiry in each case must be whether the impact of the requested Variance will be to substantially alter the character of the District as that character has been prescribed in the Zoning Ordinance. That inquiry requires

analysis and evaluation of such factors as the size of the tract itself; the size of the tract in relationship to the size and character both of the District in which it is located and the Municipality as a whole; the number of parcels into which it is anticipated that the tract will be subdivided if so division is part of the plan, and the nature, degree, and extent of the variation from District Regulations which is sought. The test of whether the Board has been engaging in proscribed legislation must ultimately be one of both geographic and functional substantiality vis-à-vis the plan and the scheme of the Municipality's Zoning Ordinance.

New Jersey Zoning and Land Use Administration, (2012 Edition), Page

113, Citing Tp. of Dover vs. Bd. of Adj.

of Tp. Of Dover (Citations omitted)

The Board analyzed the subject Application within the context of the above Guidelines.

- Against the aforesaid backdrop (regarding the potential Re-Zoning issue), the Board notes the following:

a) The size of the tract itself;

The properties in question contains 31,500 square feet in area.

b) The size of the tract in relationship to the size and character of the District in which the tract is located;

The 31,500 square foot comprising the subject properties computes to approximately 13.704%

of the subject 229,854 square foot area of the subject Convenience Commercial 2 East Zoning District. Additionally, as per the character of the Zoning District, the Convenience Commercial 2 East Zoning District is one of only 2 commercially Zones areas within the Borough.

c) The size of the tract in relationship to the size and character of the Municipality;

The 31,500 square foot comprising the subject properties computes to only 0.107% of the Borough's 1.06 square mile area (i.e. 29,551,104 square foot). Regarding the character of the Borough, the Borough is primarily a community of single-family detached dwellings, with 2 relatively small Convenience Commercial Zoning Districts.

d) The degree and extent to the variation from the Zoning Regulations being sought.

The variation from the Zoning Regulations is for 2 apartment buildings, at a density of approximately 22.126 dwelling units per acre in a Commercial Zoning District which permits 11.616 apartment dwelling units per acre (provided that only 2 units are permitted per each 7,500 square foot lot, and only if the subject units are located above permitted commercial uses).

Based upon the above, some Board Members find that approval of the within Application would not constitute an impermissible Re-Zoning of the subject properties (though the same would nonetheless detrimentally affect the Borough of Sea Girt which is why the within Application has been denied.)

Though the Land Use Board is not approving the subject Application, some members of the Board are of the opinion that the Application represents a valid / lawful request for Use Variance Approval / Density Variance Approval / Bulk Variance Approval (for which the Land Use Board has jurisdiction to act.)

- During the Public Hearing Process, the Applicant's representatives and the Objector's representatives differed as to whether the granting of the requested relief could essentially constitute "Spot Zoning" of the subject property. The aforesaid New Jersey Zoning and Land Use Administration Book, defines "Spot Zoning" as a "Re-Zoning of a Lot or Parcel of Land to benefit an Owner for a use incompatible with surrounding uses and not for the purpose or effect of furthering the comprehensive Zoning Plan." (New Jersey Zoning and Land Use Administration, citing The Illustrated Book of Development Definitions Center for Urban Policy Research.

Based upon the above, some Board Members find that with the appropriate application and with justifying testimony, approval of the subject Application would not constitute an improper exercise / incidence of spot zoning.

Though the Board is not approving the Application, the Application represents a valid / lawful request for Use Variance Approval, Density Variance Approval, and Bulk Variance Approval (for which the Borough's Land Use Board has jurisdiction to act).

- Over the course of the 8 plus month 2012 hearing process, and during the 2017 remanded hearing, the Board Members engaged in a civil and good faith debate as to the merits and detriments of the Applicant's overall proposal. Arguments in support of approving the Application included the following:
 - Aesthetic improvements associated with the proposal;
 - The benefits associated with the possibility of providing Borough residents with another form of residential housing;

- The idea that the residential apartment use is technically allowed in the zone – but just not at the level / extent / density / magnitude as proposed by the Applicant;
- The idea that the proposed buildings would comply with the Borough's Prevailing Setback Requirements;
- The idea that the proposal would comply with the technical parking requirements as established by the prevailing Residential Site Improvement Standards (RSIS); and
- The idea that approval of the Application would eliminate some pre-existing non-conforming bulk conditions at the site / sites.

Arguments against the proposal included the following:

- The sheer density of the proposal, and the associated incompatibility with the Borough's Master Plan / Zoning Ordinance;
- The fact that approval of the Application would be entirely inconsistent with the stated goal of the prevailing Zoning Ordinance which speaks to the need of preserving the Borough's existing area of commercial concentration;
- The general reluctance associated with approving a use, without commercial uses on the first floor, which, because of its size / scope / intensity, is not specifically permitted;
- The concept that the subject site / sites cannot accommodate the nature / extent / density of the Applicant's proposal;
- The concept that good sound planning should be consistent with, and stem from, the prevailing Zoning Regulations; and

- The general concept that under sound zoning principles, zoning should occur by Ordinance and not by Variance.

After weighing the positive and negative factors referenced above, and after analyzing / weighing all of the testimony and evidence presented during the public hearing process, the Board Members were not persuaded / convinced to approve the Application.

- For the reasons set forth herein, approval of the within Application is not consistent with the Borough's Master Plan.
- One of the purposes of the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-2) is to promote the establishment of appropriate population densities which will contribute to the well-being persons, neighborhoods, and communities. For the reasons set forth herein, and because of the erosion of the Borough's commercial base associated with the within application, the Board is of the opinion that approval of the within Application will not advance or promote such a purpose.
- One of the purposes of the N.J. Municipal Land Use Law is "to promote sufficient space in appropriate locations for a variety of uses...", including commercial uses. The Board notes that the within Application does not advance such a purpose, as no commercial uses are proposed.
- The number of individuals who publicly supported and / or publicly opposed the Application is of no material importance to the Planning Board Members.
- The Planning Board Members diligently, and in good faith, reviewed the merits of the within Application – irrespective of the number of individuals who publicly commented for or against the Application.
- The number of Objectors who retained an attorney and/or otherwise made public comments against the Application did not detrimentally effect, or otherwise improperly sway, the Board Members' impartial review of the Application.

- The number of Supporters who encouraged approval of the Application did not detrimentally effect, or otherwise improperly sway, the Board Members' impartial review of the Application.
- The excessive density / intensity does not create a reasonable transition from the commercial zone to the Single Family Residential Zone.
- For all of the reasons set forth herein, and during the public hearing process, the Applicant's proposal is not fundamentally sound from a planning perspective.
- As indicated in New Jersey Law, there is a strong Legislative Policy favoring Land Use Planning by Zoning Ordinance rather than by Variance. As a result, the granting of a Use / "d" Variance Application must always be the exception rather than the rule. In the within matter, the Applicant's representatives did not provide sufficient testimony justifying the grant of the extraordinary relief requested herein.
- Under New Jersey Law, it is the Applicant's burden to demonstrate sufficient reasons justifying the Variance relief - and in the within case, the Applicant has failed to meet its burden.
- The Applicant is not automatically entitled to have its property utilized for the most profitable use – particularly when the proposed use does not comply with the prevailing use/density/ Zoning Regulations.
- The development site does not contain exceptional topographic conditions or physical features which would warrant granting the relief requested herein.
- There are no extraordinary or exceptional situations uniquely affecting the development site which would warrant the relief requested herein.

- The Applicant did not prove that the purposes of the Municipal Land Use Law would be advanced by approving the within Application; rather, the within Application (representing a non-conforming Use, with a non-permitted density) specifically detracts from the purposes of the Municipal Land Use Law in that such development would not promote the general welfare, would not provide sufficient area for commercial uses, and would not provide a desirable visual environment through creative development techniques.
- Some members of the Board were of the opinion that approval of the within application would have, or could have, a significant and detrimental impact on adjoining properties.

Based upon the above, and for other reasons set forth during the Public Hearing Process, the Board is of the unanimous opinion that the subject Application is hereby **denied**.

NOTE: The aforesaid section headings are for informational purposes only and have no legal significance. That is, the same do not represent the only issues advanced / discussed / reviewed by the Applicant, the Objectors, or the Board – and are only submitted to facilitate the review process associated with the within Resolution.

MOTION TO DENY THE APPLICATION WAS MADE BY Karen Brisben

A SECOND TO THE MOTION TO DENY WAS MADE BY Ray Petronko

THOSE INDIVIDUALS WHO VOTED TO DENY THE APPLICATION:

Carla Abrahamson, Larry Benson, Karen Brisben, Jake Casey, Eileen Laszlo, Ray Petronko, Norman Hall

THOSE INDIVIDUALS WHO VOTED AGAINST THE MOTION TO DENY THE APPLICATION: None

ABSTENTIONS: None

A motion to approve the above Resolution was made by Vice-Chairwoman Laszlo, seconded by Mr. Benson and then by the following roll call vote:

Ayes: Larry Benson, Karen Brisben, Jake Casey, Eileen Laszlo, Ray

Petronko

Noes: Noes

Not Eligible to Vote: Robert Walker, John Ward

NEW BUSINESS:

The Board then considered an application for Use Variance relief for Block 20, Lot 13, 108 Chicago Boulevard, owned by Jason & Jacky Meyer, to allow the construction of a two-story addition & other alterations to the interior & exterior to the main dwelling and reconstruct the existing garage/garage apartment. Use Variance – 1 dwelling per lot allowed, 2 dwellings existing. Lot coverage – 20% allowed, 41.3% existing & 40.7% proposed. Front Setback – average setback on this block is 17.3 feet, existing & proposed on this property 13.92 feet. Rear Setback – 30 feet required, .2 feet existing, 2.33 feet proposed. Front Dwelling – existing side yard setback of 2.6 feet on one side & a combined setback of 15.2 feet which complies, however, the side yard setback for one side is an existing non-conformity. Rear Dwelling – existing side yard setback of .9 feet on one side and combined setback of 3.3 feet, both sides are an existing non-conformity. Applicant is replacing the garage & proposing the same side yard setbacks so a new variance is required.

The proper fees were paid, taxes are paid to date and the property owners within 200 feet as well as the newspaper were properly notified.

Before starting, Mr. Kennedy marked the following exhibits:

A-1. The application for a Use Variance.

A-2. Architectural plans done by Christopher Rice, dated 4/18/17.

A-3. Plot Plan done by Joseph Kuciuba, dated 2/16/17 & revised 4/18/17.

A-4. Topographic outbound survey.

A-5. Engineer's report from Leon S. Avakian, Inc. dated 6/1/17.

A-6. Attorney for the Applicant, Michael Rubino, asked that a picture Board be marked into evidence, 10 photos of the property and surrounding properties, taken a few weeks ago.

A-7. Denial letter from Zoning Officer, Jim Quigley dated 2/17.

Mr. Rubino explained that they are here to reduce the volume on the site, the Meyers want to fix up the main home by removing the dormers & putting in a new one, as well as doing upgrades in the interior. They are going to fill in part of the home in the back which will reduce the footprint. In the back is a garage and garage apartment. The garage is presently being used as a bedroom and is severely on the property line, they will be increasing this part of the rear yard by 7 feet; they are going to make the garage apartment smaller and make the garage an actual garage. All this will make the site better than what is there now.

At this time Mr. Christopher Rice, Architect, came forward and was sworn in; as the Board was very familiar with Mr. Rice he was accepted as an expert witness. He found the home to be very old and the garage is not being used as a garage, the home has a big eyesore dormer in the front and they want to bring that part of the home back into the yard and put in another, more attractive, dormer. They are gutting the first floor to bring it up to date and the second floor now has 5 bedrooms and 2 bathrooms, they are going to redo this and create 4 bedrooms and 3 bathrooms. Mr. Rice said the home needs everything updated, new electric, etc. He then presented Sheet A-1 (from Exhibit A-2) showing the existing plans and then showing the new plans; they are tearing off the rear west side of the home and the left side is being filled in as shown on this plan. Mr. Rice went on to say they could have just gutted the inside of the home and done renovations without needing to come before the Board but they wanted to put in the new dormer.

Mr. Rice said the back has a funky layout so they want to tear down the rear side of the garage and also the front section. He referred again to Exhibit A-2, this time page G-1, which shows, on the left side, the apartment now with the garage being used as a bedroom. They are going to eliminate this and make the garage a legal garage and have a small, one story bungalow.

Mr. Rice went on to say there is a door in the rear of the kitchen and a stoop that goes nowhere and they will get rid of this. He explained that it was redoing the dormers that triggered the Use Variance.

Mrs. Brisben noted the garage is over the 16 feet allowed and wanted to know if they are now going to make that comply. Mr. Rice said they have an elevation here of 16 feet 6 inches and not the 17.1 feet that Mr. Quigley says, but they can bring it down to 16 feet. Mr. Petronko asked if this will change the drip edge of the roof and Mr. Rice said they will flatten the pitch but will maintain the footings. Mr. Petronko said it looks like the drainage can go into the neighbor's yard, can they reduce the soffit? Mr. Rice said it is at 1 foot now and was not sure if reducing it will help. Mr. Petronko felt they can change the drip edge as its close to the property line and Mr. Rice said they will be taking it off.

Mr. Ward asked if they had a plan to conform to the other setbacks and get to 3 feet or 5 feet? Mr. Rice said they will comply with the rear of the garage, otherwise they would have to take down the whole thing, they can only renovate so much before it would have to come down.

As there were no further Board questions the hearing was open to the public for questions and Mr. John Ledva of 109 Brooklyn Boulevard came forward and was sworn in. He asked about the air conditioning and any other equipment, where will they be? Mr. Rice said they have not thought about it but it will have to conform. Mr. Ledva said their home is directly behind this one and the rear buildings are right by their property line and he asked what part of the buildings will be made conforming. Mr. Rice again referred to Exhibit A-2, sheet G-1 and showed him the portion of the building that will be taken down and made to comply, the rest of the apartment is not being touched, the new wall will be in compliance with the garage. Mr. Kennedy asked for clarification on this and Mr. Rice said the apartment is staying at 2.33 feet but the garage will be made to conform to 7 feet.

Mr. Casey asked about the laundry room in the back of the main dwelling and was told that will be taken out. Mr. Ledva said they now have relief with the pitch of the garage and wanted to know how will the new one look? Mr. Rice used Exhibit A-6, the picture Board, to show Mr. Ledva the garage roof, it is a gamble roof and they can take that down but the middle of the roof will stay.

As there were no more questions from the public that portion of the hearing was closed. Mr. Jason Meyer then came forward and was sworn in, he is the homeowner and told the Board they purchased the property 3 years ago; they live in Westfield and have visited the area due to college friends moving here and fell in love with it. They spent 5 years looking for a home with a front porch and he said they are only the second owners of this property, the original owners kept it in the same family down through the years. They want to preserve the home itself and just improve it, they did not know it was non-conforming and they found out they need variance approval. He said they are not planning on renting out the apartment and will be using it for family members when they visit, they feel the renovations will make the property more attractive. Mrs. Brisben asked if they may be renting out the apartment in the future and Mr. Meyer said no, it will not be rented out while they own it. Mrs. Brisben asked if this can be in the Resolution and Mr. Rubino said a future owner may want to rent it. Mr. Kennedy suggested putting in wording that the present owner will not be renting it out and leaving it there, that would be acceptable.

Mr. Petronko wanted to know how this all started being they didn't know they needed variances? Mr. Meyer explained that Mr. Rice suggested it through discussions after they found out they need Planning Board approval for the dormer, it went from there. Mr. Rubino added the problem with the rear apartment/garage and Mr. Rice felt it would be helpful to turn the west portion back into a garage; they were also taking off some of the bulk from the structures and cleaning up the rear.

Mr. Kennedy wanted verification that they will not be renting out the apartment and Mr. Meyer said this is their summer home and there will be no tenants in the apartment, just family in the summer when they visit.

At this time the hearing was opened for questions from the public to Mr. Meyer and, hearing none, that portion was closed. Mr. Joseph Kociuba then came forward and was sworn in, he is from KB Engineering and is an Engineer and Planner. As the Board was familiar with Mr. Kociuba he was accepted as an expert witness. Before he started, Mr. Kennedy wanted to have it put on record that he worked with Mr. Kociuba about 4-5 months ago, he does not work with Mr. Kociuba now and just wanted to disclose this. The Board was agreeable to this and Mr. Kociuba presented his testimony.

He said the lot is conforming and the renovations will remove 141 square feet from the rear building and 146 square feet from the front of the garage.

They are going to 7 feet on the right side rear and 2.33 feet on the left side, which is existing; this will reduce the building coverage. They are also taking 46 square feet off the front of the home which will reduce it by 4.4%, so the 42.5% lot coverage that exists now will be reduced to 38.1%, this is due to the two structures being included. He noted the Board Engineer said the coverage would be 40.7% but he said it will be 38.1%.

They are also reducing the impervious coverage, they now have 38.6% and this will go down to 29.8%; they need the Use Variance relief due to the lot having two dwellings. They want to clean this up and promote a desirable visual development. This is a special reason for allowing a Use Variance under the Municipal Land Use Law and there will be no substantial detriment to the public and no negative impact to the Zoning Ordinance. He said the front home dormers will be set back but the porch will remain the same, the existing dormers are farther in the front setback than the porch.

Mr. Ward asked about the impervious coverage and Mr. Kociuba said the Ordinance says you don't combine dwellings, as noted in the Engineer's report, item G and Mr. Rice commented that the two dwellings are considered in building coverage but not impervious coverage. Mr. Ward then asked about dry wells and Mr. Kociuba said they will have to do this and will work with the Board Engineer on the plans. Mr. Casey asked if the property value will go up after these renovations and Mr. Rice said "I hope so". He said they are reducing a bedroom and bathrooms but are putting in new construction. Mr. Casey felt a future owner may want a trade-off here, it was just a thought.

At this time the hearing was opened to the public for questions to Mr. Kociuba and Mr. Ledva came forward and asked him about putting the air conditioner unit in the back but Mr. Rice said it can't go in the back. At this time Mrs. Amy Ledva came forward and was sworn in, she asked if it is permitted to put an air conditioning unit in the rear of a building that is not conforming and Mr. Rice said yes, it can go on the roof if it conforms but this does not conform; they don't know where it will go but it won't be in the rear. Mrs. Brisben remarked that air conditioning units can only be in the rear yard and Mr. Rice agreed, they will have to look at options here; Mrs. Brisben felt perhaps they can put this unit in the rear of the front home and it can service the garage apartment.

As there were no other questions to Mr. Kociuba and all testimony was given the hearing was open for general comments and Mrs. Ledva came forward again and submitted two photos of the rear of 108 Chicago from their back yard,

the first one was marked as Exhibit P-1 which is a photo was taken in 2011 by her and showed a fence behind the hemlocks. Exhibit P-2 was another one taken around 2010. She asked if the roof line will go straight across now and Mr. Rice said the photo was taken at a tricky angle, one peak is 2 feet from the property and will now be 7 feet, they are tying the buildings together and the roofs will be connected. He showed her on the photos what he meant and said it will be better. Mrs. Ledva then asked about a box window with a window seat which juts about maybe another foot and, with the light in there on, it illuminates the area. Mr. Meyer spoke and said that is going to stay as it is in an area they are not changing. Mrs. Ledva then asked if the existing roof line for the apartment is conforming and Mr. Kociuba said no, it is 17 feet above the crown of the road. Mrs. Brisben then asked if both the garage and apartment, which will be connected, will be at the same height of 17 feet and the answer was yes.

As there were no other comments from the audience the Board went into discussion. Mrs. Brisben felt this is a nightmare application, 40% lot coverage is just mind boggling; but this is pre-existing with all the variances and she felt they are improving the property, she would reluctantly give approval and then commented she did not realize the garage apartment & garage both had the same roof line at 17 feet so she now felt the garage height should stay at 17 feet to keep it even. Mr. Petronko agreed and appreciated their trying to fix this up. Mr. Casey said that, over on Trenton Boulevard, there was a garage that was not conforming and it was removed and one was put in that did conform; he was reluctant to support this application and wanted to see wording that no paying tenants will be occupying the apartment. Mr. Ward was not in support of this application as there is too much density, we have zoning rules and he felt they should try to observe the current zoning practices. He could understand where they were coming from but can't support the level of density. Mr. Walker said he would be in favor of approval as he felt they have done the best they can. Mr. Benson agreed this is pre-existing and they are not leveling the land, he felt this was reasonable and they did a good job; he did not see any harm here and would approve it. Vice-Chairwoman Laszlo felt they have a very complicated situation and she first thought no, but after hearing this and seeing the work that was put in and a garage being brought back she thought they are taking away a bad situation. She has never seen a structure so close and she would be in favor of this.

Mr. Rubino then spoke and agreed this is a tough property, the applicants wanted to do an addition to the front house and they will now fix up the rear as

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well. A yes vote will result in less impervious coverage, will be a better looking home and garage apartment; he saw this as a win-win. Mr. Casey asked if the Board could approve just the front and not the back but Mr. Rubino said that option is not in this application. Mr. Rice repeated they are all here because of him, he was the one that pushed the Meyers to do this; Mr. Rubino asked him how big is that garage bedroom and the answer was 14x16.

Mr. Kennedy then explained that this is a Use Variance and requires 5 affirmative votes, it is not a simple majority. He then went over some of the conditions of compliance: eliminate the rear door and stoop of the rear apartment, the roof height is off the table and Mr. Kennedy then asked about soffits. Mr. Kociuba said there will be a drywell as required by the Board Engineer so Mr. Kennedy said he will put in wording that they have to comply with the Engineer as to the drainage to the adjacent property; another condition will be to have all mechanical equipment be put in a conforming location and not in the rear 7 foot property setback and this owner will not lease out the rear apartment as long as they own the property.

At this time Mr. Petronko made a motion to approve the application with the conditions noted, this seconded by Mrs. Brisben and then by the following roll call vote:

Ayes: Larry Benson, Karen Brisben, Jake Casey, Eileen Laszlo,

Ray Petronko, Robert Walker

Noes: John Ward

As there was no other business to come before the Board a motion to adjourn was made by Mr. Benson, seconded by Mrs. Brisben and unanimously approve, all aye. The meeting was adjourned at 9:00 p.m.

Approved: August 16, 2017

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