

SEA GIRT PLANNING BOARD

WEDNESDAY, MAY 17, 2017

The Regular meeting of the Sea Girt Planning Board was held on Wednesday, May 17, 2017 at 7:00 pm in the Sea Girt Elementary School, Bell Place. In compliance with the Open Public Meetings Act, notice of this Body's meeting had been sent to the official newspapers of the Board and the Borough Clerk fixing the time & place of all hearings. After a salute to the flag, roll call was taken:

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

Absent – Mayor Ken Farrell, Councilwoman Anne Morris, Bret Violette, John Ward

Also present was Kevin Kennedy, Board Attorney and Board Engineer Peter Avakian; Board Secretary Karen Brisben recorded the Minutes. There were approximately 50 people in the audience.

The Minutes of the March 15, 2017 meeting were approved on a motion by Mr. Benson, seconded by Mr. Petronko and unanimously approved, all aye.

NEW BUSINESS:

The agenda was moved around to allow the Board to consider approval of an Ordinance amendment, Ordinance No. 06-2017, in regards to the Zoning Ordinance. It set definitions, requires all applications before the Planning Board to notice and addressed the use of dumpsters & other construction issues.

Mr. Kennedy explained that, in order for the Council to adopt this Ordinance it has to be reviewed by the Planning Board and this Board has to ask if this is consistent with the Master Plan. Chairman Hall said he would like to see wording added to include better requirements for silt fencing, other town have better rules regarding height, etc. He also felt that, in the definitions of home office, larger trucks should be allowed to deliver. Mrs. Brisben felt the Ordinance was fine the way it was worded, she wanted to have it get adopted as written and felt that Chairman Hall's comments can be considered in the future for further amendments. At this time Mrs. Brisben made a motion to approve this Ordinance change, this seconded by Mrs. Laszlo and then by the following roll call vote:

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

Noes: None

Mrs. Brisben was instructed to write to the Borough Administrator and Council letting them know the Planning Board was in approval of an adoption of Ordinance 06-2017. Mrs. Brisben said she will also include Chairman Hall's suggestions in her letter to them.

Turning to the main business of the evening, the Board then considered a remanded hearing application for Site Plan/Use Variance for Sea Girt Village, Block 76, Lot 1, 501 Washington Boulevard, owned by 501 Washington Blvd., LLC, Block 76, Lot 2, 502 Washington Boulevard, owned by 504 Washington Blvd., LLC, Block 77, Lot 16, 500 Washington Boulevard, owned by Sitco Sea Girt, LLC, Block 77, Lot 17, 905 Fifth Avenue, owned by 905 Fifth Avenue, LLC, a Use Variance application to allow residential apartments in a Commercial Zone.

The \$1,200 fee was paid (set by the Board Engineer), taxes are paid to date and the property owners within 200 feet as well as the newspaper were properly notified. Chairman Hall started by telling the audience they will have a period of time for comments after the testimony and to please be respectful.

At this time Mr. Kennedy wanted to go over the history of this application since it has been 5 years since it was originally heard, he also wanted to announce that Board member John Ward lives within 200 feet of this property and had to recuse himself, as well as Mayor Farrell and Councilwoman Morris as they are not eligible to hear a Use Variance.

He then proceeded to state there are 5 companies involved here, all owned collectively by the applicant, William Sitar. These properties are in the 2E Convenience Commercial Zone and the applicant wants to demolish the existing buildings and put up two buildings with 8 apartments in each of them, a total of 16 residential apartments. This means the applicant has to present a Use Variance for a use not permitted in the zone as well as a D1 Variance for density. Between the months of March 2012 – October 2012 there were hearings and the Board unanimously denied the plan. The applicant then filed a complaint in Superior Court as well as filing against the Borough for its building coverage Ordinance; this was a bifurcated complaint, one against the Planning Board and one against the Borough. The Court affirmed the Planning Board's decision and said they were not arbitrary, unreasonable or capricious. Sea Girt Council did amend their coverage Ordinance and that part of the complaint was withdrawn.

The applicants asked for a remand as the coverage definition was now changed but that was denied by Judge Cleary of the Superior Court, that denial marked this

evening as Exhibit B-1000. The applicant then appealed to the Appellate Court which is a long process to complete and heard before a three-judge panel in December 2016; their judicial opinion was marked as Exhibit B-1001. Mr. Kennedy then read a couple of pages of that report, on page 8 they said that reconsideration should be done as they decided the Superior Court was wrong in their decision to uphold the Board's findings and they wanted a remand hearing before the Planning Board again as coverage was no longer an issue. The Order from the Superior Court was marked as Exhibit B-1002 and dated 3/1/2017.

This is the basis for this remanded hearing, Mr. Kennedy was told they had 60 days to hear this matter but that could not be worked out and on 4/10/2017 Mr. Kennedy wrote to the Court stating the Board would be hearing this on 5/17/2017, this was marked as Exhibit B-1003. He said that 3 Planning Board members were on the Board that originally heard this, Larry Benson, Karen Brisben and Norman Hall. He then stated the certifications he had received from Board members who had read the transcripts of those hearings from 2012:

- Exhibit B-1004, Eileen Laszlo
- Exhibit B-1005, Carla Abrahamson
- Exhibit B-1006, Ray Petronko
- Exhibit B-1007, Jake Casey
- Exhibit B-1008, Karen Brisben

Mr. Kennedy went on to say that Mr. Hirsch, attorney for the applicant, did notice to property owners within 200 feet as well as the newspaper in a proper manner and asked if anyone in the audience had a question on this notice; there was no response so Mr. Kennedy marked as Exhibit B-1009 the public notice & affidavit from the newspaper as well as the affidavit of service to the public. He also reminded all that this is a remanded hearing and all the testimony from 2012 still exists. If one made a statement in 2012 it does not have to be repeated here tonight but additional comments can be made.

It was announced that Mr. Tom Hirsch was here this evening for the applicant, as well as Mr. Ed Liston as attorney for objector Tom Jennings. The question was asked if the Board Planner Mr. Coppola was here this evening and Mr. Kennedy said no, he is now retired. Mr. Kennedy then asked Mr. Hirsch who were the principals of the companies he represents and he said William Sitar. At this time Mr. Peter Avakian, Board Engineer, was sworn in as well as the 5 original professionals that gave testimony for the applicant back in 2012. Mr. Hirsch said all the exhibits that the Planning Board had on file are here this evening, they are from 2012.

Mr. Hirsch then started his remanded hearing information. He thanked all the Board members for their work in preparing for this hearing this evening, this has taken so long due to the bureaucracy of the court system; he even received an apology from the Appellate Court for taking so long. All had agreed that to consider 20% lot coverage

now would be in violation of the Ordinance that was changed and that was the basis for much of this reconsideration of this application; in the original denial there were 17 references to lot coverage and that had to be changed. This Board is not bound by what happened before and has to look at this application anew.

Mr. Hirsch had heard comments that Mr. Sitar knew what this was zoned for when he bought the properties, but he starting purchasing these lots back in the mid 1990's. The Sitar companies are in the business of commercial properties and Mr. Sitar intended to keep these commercial properties and for 15 years has tried to develop them commercially and had signs out to attract tenants. The sites now are under-utilized and there is a need for new buildings, he did not want apartments and all that was explained back in 2012 through testimony. He could not get any tenants and only got a season lease for the ice cream store on the one corner. He did have a barber shop and antique store for awhile but both went out of business. There also was testimony regarding the changes to the area, there was development going on in Wall Township, Neptune and Main Street in Manasquan, but the Sea Girt Ordinance was not changed.

He wants the Board to understand where Mr. Sitar is, he originally went to the Board informally and was encouraged to proceed, he has lived in Sea Girt for 40 years and loves the town. This application is to consolidate the two lots on each corner and create two 2 ½ story buildings with 8 apartments in each building. Mr. Avakian wrote two reports and listed the variances for bulk setbacks, parking, drainage, etc. as well as a need for a D1 variance for a Use Variance and D5 for a Density Variance. They also need a variance for the storage buildings, each will be 341 square feet and divided into 8 sections; this needs a variance because it is not addressed in the Zoning Ordinance, that refers just to garages. The D1 Variance is for the apartments as the Zoning allows 2 apartments on the second floor of a commercial building and they want to use the first floor as well for apartments. The D5 Variance is needed as the Ordinance allows 2 apartments on the second floor and they are asking for 4, as these will be large buildings there will not be a problem. Mr. Hirsch felt this can be granted without any detriment to the Zoning Plan or Zoning Ordinance. He also said he was not going to go through every Exhibit and all the testimony that was already given, he was only going to use the best examples here.

Mr. Petronko questioned the Exhibits of the architectural rendering and asked if they are the same. Mr. Casey noted there is no driveway or storage sheds or garbage area on the plans. Mr. Hirsch said they are all on the site plan itself, this is just a "rendering". Mr. Petronko asked why this is not illustrated in the rendering. Mr. Avakian spoke up and said these were original plans, the Monmouth County Planning Board told them they could not have access from Washington Boulevard which is a County Road so they had to take their access off Fifth Avenue, which changed the rendering. Mr. Kennedy marked the two Exhibits in question as Exhibit A-17 and A-18; Mr. Avakian noted that Exhibit A-18 shows the proper access from Fifth Avenue. Mr. Hirsch again

said the site plan itself shows the correct plans; he said the buildings will be visibly appealing on all sides, they are going to use aged brick, double hung windows, etc. If these were commercial buildings they could not build with this kind of quality, it would be too expensive and these will be luxury apartments going from 3,000 to 3,500 square feet each; he did comment that that was from 5 years ago and may change. The properties, as they stand today, are nonconforming and in violation.

They are proposing lot coverage of 32.9% and 35%, the average coverage in the Commercial Zone is 35%, with 90% exceeding the 20% coverage that was in the old Ordinance, so these new buildings will comply with what is there. They have met all onsite parking requirements and are planting 89 evergreens along with many shrubs and plants. The lighting was discussed and is okay, as well as the drainage plans, the site is suited for this use. He cited the Municipal Land Use Law, 40:55D-2 on appropriate uses and two of those uses were met here; he then said these apartments will allow people to stay in Sea Girt if they sell their home and be able to walk to town, there will be no detriment to the surrounding residential properties and both his Planner, Mr. Thomas, and the Board's Planner, Mr. Coppola agreed on this. The traffic issue was also discussed and it was stated that residential use would be less congested than commercial use.

Mr. Hirsch said there also is an argument that this is creating a precedent and we all know this is not true as each application stands on its own merit; these lots are unique and he went through 11 items (found in the August transcript, pages 123-127) showing the uniqueness of these lots. Also, this is not rezoning, there are hundreds of Use Variances granted and there are also hundreds denied, this is done all the time. In the Board's own Resolution it states, on Page 30, that this would not constitute rezoning. This concluded Mr. Hirsch's comments but he requested to come back with a summation after Mr. Liston has spoken and the public has commented.

Mr. Petronko had questions, he had read both Planners' reports and felt that Mr. Coppola's comments were glossed over and Mr. Thomas was completely against this application, Mr. Petronko then read parts of transcripts. Mr. Hirsch said they had to show the use as being okay but Mr. Petronko said Mr. Thomas stated this application should be for commercial development, this from page 22 of the September 2012 transcript. If this is developed for apartments, the commercial use will never be done and it will be lost. Also, on page 81 of the August transcript Mr. Thomas did not agree with Mr. Coppola. Mr. Hirsch felt that Mr. Coppola was trying to advise the Board and he did not think it said anywhere that this should be denied; Mr. Coppola said it should be up to the Board.

At this time Chairman Hall felt a 5 minute recess was needed and there was a break in the hearing from 9:10 p.m. to 9:20 p.m. Chairman Hall announced that the Board was planning on going until around 10:00 p.m. and, if needed, this hearing would be carried. At 9:20 p.m. Mr. Kennedy requested Mrs. Brisben to do another roll call and

the following was done: Here – Carla Abrahamson, Larry Benson, Karen Brisben, Jake Casey, Eileen Laszlo, Ray Petronko, Norman Hall. Absent – Mayor Ken Farrell, Councilwoman Anne Morris, Bret Violette, John Ward.

At this time Mr. Ed Liston, Esq. came up to the podium to speak and said he can do this quickly. He felt the new lot coverage change does not change matters and he read from the Borough Zoning Ordinance the definition of the Commercial Zone which spoke of keeping the low density that is in the Borough. He said if the Board grants this Use Variance it takes away almost 14% of the commercial area. The apartments could accommodate 60 adults, this property can be developed in full conformity but it would be less profitable, the buildings now are run down and can't be rented. Mr. Liston felt this project will make Mr. Sitar a lot more money and the properties should be developed within the Zoning Ordinance restrictions as it is the last commercial property to be developed. He disagreed with Mr. Hirsch and felt this will create a precedent and cited a Dover Township vs. the Board of Adjustment of 1978 case, where it was felt the variances became rezoning and the Planning Board does not have the power to rezone, that is what Council can do. This case also cited impacting the Master Plan and he felt this Sea Girt application has the potential of destroying the character of Sea Girt, these apartments will be here for a long time with a substantial number of people. Mr. Liston then spoke of another case law where it was stated that you can't use a zone line as a reason for development and quoted from the Municipal Land Use Law that the preservation of a neighborhood is important to preserve.

Mr. Hirsch then came forward again to address some of Mr. Liston's comments. He said Mr. Liston spoke of the downfall of Sea Girt and he felt Mr. Liston accused Mr. Sitar of a plot to let the properties get run down and then ask for a Use Variance, the testimony that was given of the difficulty in renting for commercial use was not questioned. He said they could have developed just one corner and then come back after but they wanted to show the vision of the Gateway to the Commercial area and feel this is a benefit to the municipality. Now another beauty parlor has left as well as a bank, both on Washington Boulevard, something has to be done with this land. This will not create housing for 60 more people and will not be used for summer rentals, these will be one year leases or longer; we all know case law and there will be no adverse impact on the surrounding residential area. Mr. Hirsch then wanted to go into a rebuttal of Mr. Liston's referring to the Dover Township case but Chairman Hall felt the Board has to go on and opened the meeting to public comments.

Shawn Mulligan of 101 Neptune Place came forward and was sworn in. He is the owner of 530 Washington Boulevard, the old Real Estate agency. He said he bought it as he thought it was a good building but old, he has the downstairs for commercial and upstairs apartments, which were not rented out until he had done renovations, he spent money but it was worth it as all is now rented out. Mike Keefe of 406 Crescent Parkway came forward next and was sworn in, he lives across from the north lot, he is catty corner within the 200 feet and was very strongly against this, there

are viable buildings in the commercial zone and he referred to the Chris Rice building which has been redone. Sea Girt is unique and this is why the Ordinance is what it is, he felt that up to 80 people could live here, he heard that from one of Mr. Sitar's associates, and this is too much. Why put in 3 bedroom apartments if you don't want families moving in? He said he is involved with luxury rentals in New York City and did not see this happening down here in Sea Girt and thought there would be a residential impact. He also wondered what will happen in 10-20 years if Mr. Sitar sells this, anything can happen. He stated this was a terrible idea for the town, it is so small that this type of development would affect the whole town, even if he lived on The Terrace he would object. He said he would move if this is built, he does not want to live by 16 apartments.

Next to come forward was Nicholas Walsifer of Crescent Parkway who was sworn in, his property backs up to the north parcel. He is a retired law officer and knows apartments, commercial uses close up at night but apartments are 24 hours, there will be extra work for the Police, Fire, etc. and if there is an absentee landlord, who will monitor this? He has 3 small children, one with special needs, and he has been a police officer for 25 years, he was not in favor.

Joe Marone of 508 Washington Boulevard came forward and was sworn in, he has a commercial building and has tenants, if you build a good building you will get tenants. Chris Carhart of 618 New York Boulevard then was sworn in and said he was at the 2012 hearings and had a lot of concerns that he won't go over again. He said that a lot of kids hang out at the ice cream shop in the summer; he has been here since the 1980s and has seen properties being razed and huge homes being built, money has changed the face of Sea Girt, taking away the heart & soul of the town; he was not for high density living, it was not good for Sea Girt, it's a tiny little place.

Marilyn Ward of 509 Sea Girt Avenue came forward to speak, she is John Ward's wife, the Board member who is not eligible to hear this application as they live within 200 feet of one of the properties. Mr. Kennedy said the law says we have to be careful here, Mr. and Mrs. Ward own property within 200 feet and his wife does have the right to speak, but the Board has to treat her comments the same as everyone else. Mrs. Ward then felt it may be better if she did not speak.

As there were no more public comments, that portion of the hearing was closed and Mrs. Brisben asked if the Board can hear Mr. Avakian speak on his latest report to ascertain how many variances there are. However, before that Mr. Liston said he did not want to hear comments from Mr. Hirsch and he wouldn't if Mr. Hirsch wouldn't. Mr. Hirsch said he is trying to work with the Court remand; as applicant's attorney, he would let Mr. Liston go first and then he will go, but he also would like to hear from Mr. Avakian.

Mrs. Rita Terraciano of Ocean Avenue then came forward to speak and the Board allowed her to do so. She said that when Mr. Schwier renovated his building on Washington Boulevard she thanked him as he built in character of the town. She did not want to see a city-type building, Sea Girt is a sweet little town that was being improved by the new beautiful homes going up, do we really want to see this happen?

The public hearing portion was once again closed and Mr. Avakian went over his report. There are two properties that are identical as they are the same types of buildings and site improvements, the variances are identical for both buildings. The Ordinance allows 1-2 apartments over businesses and the applicant wants to put in 8 apartments which calls for a Use Variance and a Density Variance, the applicant has to show any problems are taken care of with the increased density. Also, apartments are not allowed on the first floor which creates the Use Variance, the applicant has to show the suitability for the proposed use and that it will not impair the Zoning Ordinance and that the variances are not inconsistent with the Zoning and Master Plan.

The lot coverage and parking requirements have all been settled and are okay with this remanded hearing. However, the heights of the decorative fences and walls have not been lowered and need a variance, they are greater than 3 feet and the vinyl fencing is at 4 feet and needs a variance. The original testimony in 2012 said they would revise the plans to lower these but no revised plans were ever done; the storage sheds also need variances. He again said these variances apply to both buildings.

At this time Mr. Liston came forward to give his summation. He felt this project may be good for Mr. Sitar and his pocketbook but horrible for the town, the Board has to hear the variances but the decision is up to the Board. He finished by stating he felt it was rezoning.

Mr. Hirsch said he heard concerns from the townspeople and people are allowed their opinions. He did not say there are not viable commercial properties in town and asked to take things in perspective, not all apartment complexes have 24 hour police needs and the landlord will not allow subletting, etc. The site is unique and you have to take this into consideration, these sites should be adjusted and that can be done here as the Planning Board has jurisdiction. There is no slum lord here, Mr. Sitar lives in town; Mr. Hirsch asked that fear be put away and treat the facts as they are as this will improve the area, these lots are under-utilized sites and there will be no adverse impact and Mr. Sitar can put in the same size commercial buildings.

Chairman Hall announced that now is the time for the Board to make their comments and then there will be a vote. Mr. Kennedy asked each member to make a statement as to why they are going to vote for or against the application and Mrs. Brisben was asked to start. She said she was here for the original hearing and was familiar with this application. She felt it was very nicely presented with attractive buildings, very large; however, they will be mirror images across the street from one

another on a corner. Coming down Washington Boulevard this is what you will see as they are going to be the biggest structures in this area. She understood that Mr. Sitar can build a similar structure with commercial use on the first floor and two apartments on the second floor, this would create 4 apartments, not 16 and she felt this was more in keeping with the purpose of the Commercial Zoning which reads "to preserve the commercial area and be compatible with the overall low density residential character of the Borough". She felt that density plays an issue here, 4 apartments are better than 16 and keeps the low density purpose as stated in Sea Girt's zoning. She would not be in favor of this Use Variance application.

Mrs. Laszlo came to Borough Hall and studied the Exhibits, she would loved to have seen a modified plan as she was also concerned with density. She was not in favor. Mrs. Abrahamson agreed with Mrs. Brisben and Mrs. Laszlo and could see no need to repeat what was said. Mr. Casey could not see undue hardship here and the 14% of the commercial zone that will be lost is a lot.

Mr. Petronko said he was on Council in another town and knows all about the Residential Site Improvement Standards (RSIS) and parking and this is why we now have small parking spots. On the south lot there are only 15 spaces and he felt this may be a parking problem and did not feel there was enough parking here, the traffic study was done in October of 2011 as spoken about in the transcripts, he felt there should have been another one done in the summer and this didn't add up. He also wondered what could be the COAH implication, it wasn't addressed; he felt there was more negative comments than positive comments from the Board Planner back in 2012. They are beautiful buildings but what we really have to look at is what we want in Sea Girt, he did not feel this will be beneficial and this is a self-created hardship. You want to come here because of what Sea Girt offers and then you want to change the zoning, Mr. Petronko did not feel the case was proved.

Mr. Benson said he did not have any more to add, it has all been said. Chairman Hall wanted to thank all for their comments. The Board said this is not rezoning but he personally felt it was and has felt that way since 2012. He then asked for a motion to deny or approve and Mrs. Brisben made a motion to deny the application, as presented, this seconded by Mr. Petronko and then by the following roll call vote (a yes is for denial and a no is for approval):

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

Noes: None

As there was no other business to come before the Board a motion was made by Mrs. Brisben to adjourn, this seconded by Mr. Petronko and unanimously approved, the meeting was adjourned at 10:40 p.m.

Wednesday, May 17, 2017