

SEA GIRT PLANNING BOARD  
WEDNESDAY, July 18, 2018

The Regular Meeting of the Sea Girt Planning Board was held on Wednesday, July 18, 2018 at 7:00 p.m. at the Sea Girt Elementary School, Bell Place, Sea Girt. 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 and place of all hearings. After a Salute to the Flag, roll call was taken:

Present: Carla Abrahamson, Larry Benson, Karen Brisben, Jake Casey, Mayor Ken Farrell, Eileen Laszlo, Councilman Michael Meixsell, Robert Walker, John Ward, Norman Hall

Absent: Ray Petronko

Also present was Kevin Kennedy, Board Attorney; Board member and Secretary Karen Brisben recorded the Minutes. There were 15 people in the audience.

The Minutes of June 20, 2018 were approved on a motion by Mr. Ward, seconded by Mr. Casey and approved with Mayor Farrell and Councilman Meixsell abstaining.

OLD BUSINESS:

The first item was approval of a Resolution for variance relief for Block 84, Lot 4, 609 Beacon Boulevard, owned by Anne Semanik, to allow renovation of an existing home and adding an addition. Mr. Kennedy went over the conditions in the Resolution and summarized all. He especially went over the condition of the air conditioner unit location and that Ms. Semanik has to go before Sea Girt Council to keep the unit at that side yard site. Mayor Farrell added that the 5 foot piece of property that the Semaniks wish to acquire is not actually owned by the Borough, there is an "unknown owner" and the Borough is in the process of filing for foreclosure; then the Borough will become the owner. Mr. Kennedy said he will re-word the Resolution to reflect this.

The following amended Resolution was then presented for approval:

**WHEREAS**, Anne Semanik has made Application to the Sea Girt Planning Board for the property designated as Block 84, Lot 4, commonly known as 609 Beacon Boulevard, Sea Girt, New Jersey, within the Borough's District 1, West Single-Family Zone, for the following approval: Bulk Variances associated with an Application to effectuate a number of improvements to an existing single-family home; and

## **PUBLIC HEARING**

**WHEREAS**, the Board held a Public Hearing on June 20, 2018, Applicant having filed proper Proof of Service and Publication in accordance with Statutory and Ordinance Requirements; and

## **EVIDENCE / EXHIBITS**

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

- *Planning Board Application Package, introduced into Evidence as A-1;*
- *Zoning Officer Denial Letter, dated December 28, 2017, introduced into Evidence as A-2;*
- *Architectural Plans, prepared by Paul A. Damiano Architects, LLC, dated December 5, 2017, last revised April 27, 2018, consisting of 7 sheets, introduced into Evidence as A-3;*
- *Survey, prepared by Charles Surmonte, P.L.S., dated December 21, 2015, introduced into Evidence as A-4;*
- *Leon S. Avakian Inc., Review Memorandum, dated June 1<sup>st</sup>, 2018, introduced into Evidence as A-5;*
- *A series of photographs of the subject property and surrounding properties (with the Zoning Map) taken by the Applicant, collectively introduced into Evidence as A-6;*
- *Communication from Architect Paul A. Damiano, dated June 14, 2018, introduced for identification purposes only, as A-7;*
- *Photo-board containing portions of the Municipal Zoning Map, as well as other pictures of the site and surrounding areas, introduced into Evidence as A-8;*
- *Affidavit of Service; and*
- *Affidavit of Publication.*

## **WITNESSES**

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

- Anne Semanik, Applicant;
- John Brennan, Esq. appearing;

## **TESTIMONY AND OTHER EVIDENCE PRESENTED ON BEHALF OF THE APPLICANT**

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

- The Applicant is the Owner of the subject property.
- The Applicant purchased the property in or about 2015.
- There is an existing single-family home at the site.
- The Applicant initially purchased the home to be utilized as a second home.
- The Applicant now lives at the site, on a full-time basis.
- The existing 1 ½ story home was, upon information and belief, constructed in or about the 1920's.
- As an older home, there are several functional issues/limitations associated with the existing structure. For instance:
  - a. There is only 1 closet in the home;
  - b. The existing kitchen is quite small and not designed for the needs of a modern family;
  - c. The existing bedroom is quite small, and not designed for the needs of a modern family.
- In order to increase living space at the home and in order to make the home more functional/modern, the Applicant is proposing a number of improvements.
- The proposed improvements include the following:

- Construction of an addition at the rear of the existing dwelling;
  - Removal of an existing slate patio;
  - Removal of the existing exterior shower;
- Upon completion of the renovation process, the home will include the following:

#### FIRST FLOOR

Kitchen  
Living Area  
Dining Area  
Sitting Room  
Laundry Room  
Mud Room  
Bathroom  
Paver Patio

#### SECOND FLOOR

Master Bedroom  
Bedroom #2  
Bathroom

- There is a 5 ft. strip of land to the immediate west of the Applicant's lot – and, despite a diligent search, the same has an unknown owner.
- The Applicant is ultimately hoping to acquire title to the 5 ft. strip of land (perhaps from the Borough, which may potentially acquire title through some type of In Rem Foreclosure).
- If the Applicant secures title to the 5 ft. strip of land, and the Applicant merges the 5 ft. parcel with the Applicant's existing parcel, the Applicant's parcel will contain a conforming 7,500 sq. ft.
- The Applicant will be utilizing Licensed Contractors in connection with the construction process.
- The Applicant anticipates having the construction work completed in the very near future.

## **VARIANCES**

**WHEREAS**, the Application as submitted, requires approval for the following

Variances:

*BUILDING COVERAGE: Maximum 20% allowed;  
whereas  
21.4% proposed.*

*IMPERVIOUS COVERAGE: Maximum 35% allowed;  
whereas 41.2% proposed;*

*SIDE YARD SETBACK (West Side): 10 ft. required;  
whereas 2 ft. proposed;*

*SIDE YARD SETBACK: 10 ft. required; whereas 2 ft.  
proposed for the paver patio (located off of the proposed  
addition).*

## **PUBLIC COMMENTS**

**WHEREAS**, sworn comments, questions, and / or statements regarding the Application were presented by the following members of the public:

- Dan Beckmann
- Candice Kadimik

## **FINDINGS OF FACT**

**NOW, THEREFORE, BE IT RESOLVED**, by the Sea Girt Planning Board, after having considered the aforementioned Application, plans, evidence, and testimony, that the Application is hereby **approved 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 609 Beacon Boulevard, Sea Girt, New Jersey, within the Borough's District 1, West Single-Family Zone.

3. The subject property contains an existing single-family home.

4. Single-family use is a permitted use in the subject Zone.

5. In order to increase the functionality of the existing home, and in order to increase living space, the Applicant propose to construct several improvements. The proposed improvements include the following:

- Construction of an addition at the rear of the existing dwelling;
- Removal of an existing slate patio;
- Removal of the existing exterior shower;

6. Such a proposal requires Bulk Variance approval.

7. The Sea Girt Planning Board is statutorily authorized to grant such relief and therefore, the matter is properly before the said entity.

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

- The subject property is non-compliant in terms of lot area. That is, a minimum lot area of 7,500 sq. ft. is required; whereas only 6,750 sq. ft. exists.
- The subject property has a 45 ft. lot width; whereas a 50 ft. lot width is otherwise required in the zone.
- The subject property has a 150 ft. lot depth, which conforms with prevailing Borough requirements.
- Per the testimony and evidence presented, including the survey (A-4), there is an approximate 5 ft. strip of

land located immediately to the West of the Applicant's lot.

- Per the testimony and evidence presented, the 5 ft. strip of land has an unknown owner.
- Apparently, the Applicant's representatives have communicated with the Borough's representatives over the last several years relative to the Applicant's desire to acquire title to the aforesaid 5 ft. strip of land.
- Despite diligent efforts, there is no known information as to the 5 ft. strip of land.
- The lack of an identified/recognizable owner of the 5 ft. strip of land, has caused significant problems in acquiring/transferring title to the said area.
- Upon information and belief, and per the testimony presented during the Public Hearing process, the Borough of Sea Girt may potentially be interested in acquiring ownership of the 5 ft. strip of land (through some type of In Rem Foreclosure; or some other type of process).
- Per the testimony and evidence presented by the Applicant's representatives, if the Borough of Sea Girt does, in fact, acquire title to the 5 ft. strip of land, the Borough may possibly consider selling the same to the Applicant (in accordance with the requirements of New Jersey Law).
- Obviously, there is no official statement/documentation presented by the Borough of Sea Girt relative to the said statements and thus, the Planning Board cannot rely on any such hearsay statements.
- The Applicant shall, in good faith, pursue acquisition of title to the aforesaid 5 ft. strip of land.
- The Applicant anticipates one day owning title to the aforesaid 5 ft. strip of land.

- The Board recognizes, and appreciates, the Applicant's desire/efforts to obtain title to the aforesaid 5 ft. strip of land.
- That notwithstanding, the Board can only rule upon the status of title which exists at the time the subject Zoning Application is adjudicated.
- The Board Members recognize that the existence of the 5 ft. strip of land (located immediately to the west of the Applicant's site) does, in fact, create a unique situation.
- The Board recognizes that if the 5 ft. strip of land is someday owned by the Applicant, and the said 5 ft. strip of land is consolidated with the Applicant's existing lot, the Applicant's consolidated lot will have a conforming lot area of 7,500 sq. ft.
- The Board is also aware that if the Applicant ever acquires title to the 5 ft. strip of land, and consolidates the same with the Applicant's existing lot, some of the variance requested herein would be greatly reduced and/or otherwise eliminated.
- Subject to the conditions contained herein, the subject site can physically accommodate the renovations approved herein.
- The Applicant's site / lot can physically accommodate the improvements proposed / approved herein.
- Approval of the within Application will not have an adverse aesthetic impact on the site or the neighborhood.
- Approval of the within Application will make the existing home more functional, and approval will also improve the quality of life for the homeowner.
- Single-family use, as approved / continued herein, is a permitted use in the subject Zone.

- The location of the proposed improvements is practical and appropriate.
- Subject to the conditions contained herein, the renovations approved herein will not over-power / over-whelm the subject Lot.
- Upon completion, the renovation approved herein will not over-power / dwarf other homes in the area.
- The renovation approved herein is attractive and upscale, in accordance with Prevailing Community Standards.
- Approval of the within Application will not detrimentally affect existing parking requirements at the site.
- The Board appreciates the Applicant' willingness to renovate and improve an older home (as opposed to mere demolition).
- There is value in approving Applications which preserve older / stately homes.
- There is a significant amount of demolition occurring within the Borough of Sea Girt – and it is refreshing that the Applicant herein has decided to preserve an existing / older structure.
- The Borough's Master Plan essentially encourages the preservation of older homes when the same is possible – and approval of the within Application will advance such a goal / objective.
- There is a functional, practical, architectural, and aesthetic value in preserving the existing structure.
- Preservation of older homes represents a legitimate development goal.
- Preserving an older home is appropriate under the circumstances.
- The benefits of preserving an older home will benefit the Sea Girt community, now and in the future.

- Per the testimony and evidence presented, the existing home, understandably, has some functional / practical limitations. For instance, there is a lack of closet space, the bedroom is undersized, and the kitchen is undersized.
- The Applicant's proposed improvements will cure/address some of the referenced practical issues/limitations.
- The Board is aware that some others might utilize the said existing conditions / limitations as a basis for demolition of the existing structure, and the reconstruction of a new building. Against the aforesaid backdrop, the Board applauds the Applicant's preservation efforts.
- The Board is also aware that sometimes, preservation efforts require the granting of Variance relief so as to essentially allow the retrofitting of an existing dwelling unit.
- The benefits of granting the Variance and preserving the existing older home out-weigh any detriments associated with the Application.
- The Board is aware that there are societal benefits associated with approving Applications which allow older structures to be preserved.
- The improvements authorized herein will architecturally and aesthetically match the existing older home.
- The existing site currently has a non-conforming impervious coverage of 41.4% (whereas a maximum 35% is otherwise allowed). As part of the within Application, the Applicant will arrange for the Building Coverage to be slightly reduced to 41.2%.
- The slight impervious coverage reduction is the result of the elimination of the existing slate patio (and other improvements).

- Though an Impervious Coverage Variance is required, approval of the within Application will actually reduce the impervious coverage from a non-conforming 41.4% to a non-conforming 41.2%.
- The Board finds that the reduction in impervious coverage, as aforesaid, although slightly, promotes sound planning.
- The Board finds that the slight reduction in impervious coverage, as aforesaid, promotes the interest of the site, the neighborhood, and the Borough of Sea Girt as a whole.
- The Board finds that the slight reduction in the impervious coverage renders the site more compliant with the Borough's overall Zoning Regulations.
- Many times, Applicant petition the Land Use Board to increase overall impervious coverage; whereas, in the within situation, the Applicant is proposing to actually reduce the existing impervious coverage.
- The Board is aware that as part of the Application process, the Applicant is actually taking away / eliminating more than she is proposing to add (thereby resulting in the slightly reduced impervious coverage).
- The Board applauds the Applicant's voluntary efforts to reduce the non-conforming impervious coverage at the site.
- As referenced, the Board notes that currently, the site has a non-conforming impervious coverage of 41.4% (whereas a maximum 35% is otherwise allowed).
- In conjunction with the above point, it is clear that the site is non-conforming in terms of impervious coverage.
- The Board is aware, and history has unfortunately and brutally detailed, that excess impervious coverage can potentially contribute to various grading / drainage / flooding issues.

- The Borough of Sea Girt has, over the last decade, contributed a significant amount of resources addressing / curing / minimizing the ill effects / repercussions of overdevelopment / excess impervious coverage.
- The Board notes, positively, and enthusiastically, that approval of the within Application will actually slightly reduce the overall impervious coverage from a non-conforming 41.4% to a non-conforming 41.2%.
- There are societal benefits associated with reducing overall impervious coverage at a site – and the Board appreciates the Applicant’s voluntary efforts in the said regard.
- The Board is aware that many times, Applicant submit Development Applications seeking to increase overall impervious coverage, without necessarily recognizing the potentially ill effects and repercussions of the same. In the within situation, it is refreshing that the Applicant is actually reducing overall impervious coverage.
- There was an extensive and good-faith debate about the location of the existing air conditioning condensers. Specifically, the testimony indicated that the air conditioning condensers are located in a side yard area and on land owned by a third party (i.e. someone other than the Applicant). The debate ensued as to whether the existing air conditioning condenser units should be relocated as part of the within Application. In that regard, arguments made in support of the immediate relocation of the air conditioning units included the following:
  - i. The existing air conditioning condenser units are located in a non-conforming location, and off the Applicant’s site, and it is appropriate to relocate the same;
  - ii. Now (while an Application is pending) is the time to require the non-conforming air conditioning condenser units to be relocated;

- iii. High efficiency air conditioning units can be noisy and problematic for neighbors who are required to endure the same;
- iv. Relocation of the existing air conditioning condenser units would eliminate a non-conforming condition at the site;
- v. Relocation of the non-conforming air conditioning condenser systems would make the site more compliant with overall Zoning Regulations;
- vi. Borough Officials typically receive a number of complaints (from affected citizens) relative to non-conforming conditions;
- vii. Relocation of the non-conforming air conditioning condenser units would materially enhance the overall acceptability of the Applicant's proposal.

Arguments in support of leaving the existing air conditioning units "as is" include the following:

- i. The existing air conditioning condensers represent a pre-existing non-conforming condition;
- ii. The existing non-conforming air conditioning condensers represent a pre-existing non-conforming condition which is not being exacerbated as a result of the within Application;
- iii. There have been no known public oppositions / neighborhood concerns associated with the location of the currently existing non-conforming air conditioning condensers;
- iv. Continued existence of the non-conforming air conditioning condensers will not substantially affect the site, the neighborhood, or the Borough of Sea Girt as a whole;
- v. Continued existence of the non-conforming air conditioning locations does not compromise the overall merits associated with the Applicant's proposal;

- vi. The Applicant did not consent to the immediate relocation of the non-conforming air conditioning condensers;
  - vii. The continued existence of the non-conforming air conditioning condenser systems would not impair the overall interests of the Borough's overall Zoning Plan;
  - viii. The Applicant agreed that when the existing non-conforming air conditioning condenser systems are replaced, the same will be relocated to a Zoning-compliant location.
  - ix. The Applicant will be attempting to obtain approval from the apparent property owner (of the adjacent 5 ft. strip of land) so as to officially allow the condensers to remain.
- As referenced, after the Applicant had some time to independently and privately review the air conditioning condenser location matter with her Attorney, the Applicant did not consent to the immediate re-location of the same.
  - After significant good-faith debate and analysis, a majority of the Board finds that the continued existence of the non-conforming air conditioning condensers will not compromise the overall merits of the subject Application (subject to the third-party property owner consenting to the same).
    - The Board notes that the Applicant has agreed to relocate the air conditioning condensers in the future (if necessary) when the same need to be replaced. Towards that end, the Board is aware that when the existing air conditioning units are replaced, the said non-conforming condition will be eliminated (unless the Applicant obtains title to the adjacent 5 ft. strip of land).
  - The setbacks approved herein will not compromise the appearance of the home.
  - Approval of the within Application will allow the Applicant to address some of the practical / functional concerns she currently has with regard to the existing home.

- The height of the renovated structure will conform with the Borough's Prevailing Height Regulations and therefore, no Height Variance is required.
- The renovated / expanded home approved herein will fit in nicely with the other homes in the neighborhood.
- Sufficiently detailed testimony / plans were presented to the Board.
- The proposed improvements / renovations should nicely complement the property and the neighborhood.
- The renovations approved herein will architecturally / aesthetically match the existing structure.
- Subject to the conditions contained herein, the proposal will not appreciably intensify the single-family nature of the lot.
- Additionally, the architectural/aesthetic benefits associated with the proposal outweigh the detriments associated with the Applicant's inability to comply with all of the specified bulk standards.
- The architectural design of the renovated home approved herein will not be inconsistent with the architectural character of other single-family homes in the area.
- Subject to the conditions set forth herein, the overall benefits associated with approving the within Application outweigh any detriments associated with the same.
- Subject to the conditions contained herein, approval of the within Application will have no known detrimental impact on adjoining property owner and, thus, the Application can be granted without causing substantial detriment to the public good.
- The renovation approved herein will not be inconsistent with other single-family improvements located within the Borough.

- Subject to the conditions contained herein, approval of the within application will promote various purposes of the Municipal Land Use Law; specifically, the same will provide a desirable visual environment through creative development techniques.
- The Application as presented satisfies the Statutory Requirements of N.J.S.A. 40:55D-70(c) (Bulk Variances).

Based upon the above, and for other reasons set forth during the Public Hearing Process, a majority of the Board is of the opinion that the requested relief can be granted without causing substantial detriment to the public good.

### **CONDITIONS**

During the course of the Hearing, the Board has requested, and the Applicant has agreed, to comply with the following conditions:

- a. The Applicant shall comply with all promises, commitments, and representations made at or during the Public Hearing process.
- b. The Applicant shall comply with the terms and conditions of the Leon S. Avakian, Inc. Review Memorandum, dated June 1, 2018 (A-5).
- c. Per the testimony presented during the Public Hearing process, the Applicant shall, in good faith, pursue acquisition of the 5 ft. strip of land (located immediately to the West of the subject property) which, upon information and belief, may be in the process of being transferred / awarded to the Borough of Sea Girt. The Applicant shall periodically advise the Board Secretary as to any developments in the said regard.
- d. The existing air conditioning condensers appear to be located, or at least partially located, on a portion of the property which is potentially, equitably, or presumably owned by the Borough of Sea Girt (or some other third party). That is, it appears that a portion of the air conditioning condensers are located on property which is not owned by the Applicant. As extensively discussed at the Public Hearing, the Sea Girt Planning Board has no

jurisdiction to retroactively or prospectively authorize/ legitimize/sanction the same. Moreover, the Applicant recognizes that any expressed, implicit, or implied approval from the Planning Board would have no significance whatsoever, as all understand that the Planning Board has no jurisdiction to grant an Applicant the right to utilize the property owned by a third party. Thus, the Applicant shall immediately petition the Borough Council of the Borough of Sea Girt (or the actual owner) to obtain permission to continue to have the air conditioning condensers so located. In the event the Borough Council of the Borough of Sea Girt (or other identified owner) denies the said request, the Applicant shall relocate the air conditioning condensers to a zoning-compliant location. The Applicant shall periodically advise the Board Secretary, in writing, as to the status of developments associated with the within condition. (Additionally, if the Applicant, or subsequent owner obtains title to the 5 ft. strip of adjacent land, then, unless otherwise required by the Borough of Sea Girt, the Applicant (or subsequent owner) shall merge/consolidate the 5 ft. strip of land into the Applicant's existing Block 84, Lot 4 parcel).

- e. The Applicant shall cause the Plans to be revised to portray and confirm the following:
  - The inclusion of a note confirming that if / when the existing non-conforming air conditioning condenser systems are replaced, the same shall be immediately relocated, so as to comply with all Prevailing Zoning Regulations (regarding size, location, setback, etc.) (unless the Applicant obtains ownership of the adjacent 5 ft. strip of land.)
- f. Unless otherwise waived by the Board Engineer, grading / drainage details shall be submitted so as to confirm the absence of any adverse impacts associated with the within proposal.
- g. The Applicant shall manage storm-water run-off during and after construction (in addition to any other prevailing/applicable requirements/obligations.)

- h. The Applicant shall obtain any applicable permits/approvals as may be required by the Borough of Sea Girt - including, but not limited to the following:
- Building Permit
  - Plumbing Permit
  - Electric Permit
  - Demolition Permit
- i. If applicable, the proposed improvement shall comply with applicable Provisions of the Americans with Disabilities Act.
- j. If applicable, grading plans shall be submitted to the Board Engineer so as to confirm that any drainage/run-off does not go onto adjoining properties.
- k. The proposed structure shall comply with the Borough's Prevailing Height Regulations.
- l. The construction shall be strictly limited to the plans which are referenced herein, and which are incorporated herein at length. Additionally, the construction shall comply with Prevailing Provisions of the Uniform Construction Code.
- m. The Applicant shall comply with all terms and conditions of the Review Memoranda, if any, issued by the Board Engineer, Borough Engineer, Construction Office, the Department of Public Works, the Bureau of Fire Prevention and Investigation, and/or other agents of the Borough.
- n. The Applicant shall obtain any and all approvals (or Letters of No Interest) from applicable outside agencies - including, but not limited to, the Department of Environmental Protection, the Monmouth County Planning Board, and the Freehold Soil Conservation District.
- o. The Applicant shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.

- p. If required by the Board / Borough Engineer, the Applicant shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.
- q. Unless otherwise agreed by the Planning Board, the approval shall be deemed abandoned, unless, within 24 months from adoption of the within Resolution, the Applicant obtains a Certificate of Occupancy (if required) for the construction / development approved herein.
- r. The approval granted herein is specifically dependent upon the accuracy and correctness of the testimony and information presented, and the accuracy of the Plans submitted and approved by the Board. The Applicant is advised that there can be no materially deviation from the Plans approved herein, except those conditions specifically set forth herein. In the event post-approval conditions at the site are different than what was presented to the Board, or different from what was otherwise known, or in the event post-approval conditions are not necessarily structurally sound, the Applicant and her representatives are not permitted to unilaterally deviate or build beyond the scope of the Board Approval. Thus, for instance, if the Board grants an Application for an existing building / structure to remain, the same cannot be unilaterally demolished (without formal Borough / Board consent), regardless of the many fine construction reasons which may exist for doing so. That is, the bases for the Board's decision to grant Zoning relief may adversely be impacted by the aforesaid change of conditions. As a result, Applicant and her representatives are not to assume that post-approval deviations can be effectuated. To the contrary, post-approval deviations can and will cause problems. Specifically, any material post-approval unilateral action, inconsistent with the testimony / plans presented / approved, which does not have advanced Borough / Board approval, will compromise the Applicant's approval, will compromise the Applicant's building process, will create uncertainty, will create stress, will delay construction, will potentially void the Board Approval, and the same will result in the Applicant incurring additional legal / engineering / architectural costs. The Applicant is encouraged to be mindful of the within – and the Borough of Sea Girt, and the Sea Girt Planning Board, are not responsible for any such

unilateral actions which are not referenced in the testimony presented to the Board, and / or the Plans approved by the Board. Moreover, the Applicant is to be mindful that the Applicant is ultimately responsible for the actions of the Applicant, her Agents, her representatives, her employees, her contractors, her engineers, her architects, her builders, her lawyers, and other 3<sup>rd</sup> parties.

**BE IT FURTHER RESOLVED**, that all representations made under oath by the Applicant and/or her agents shall be deemed conditions of the approval granted herein, and any mis-representations or actions by the Applicant 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 Applicant's 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 Applicant 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 the proposed improvement, or for any damage which may be caused by the development / renovation.

FOR THE APPLICATION: Larry Benson, Eileen Laszlo, Councilman Michael Meixsell,  
John Ward, Norman Hall

AGAINST THE APPLICATION: Jake Casey

The foregoing Resolution was offered by: Mrs. Laszlo, seconded by Mr. Ward and then by the following roll call vote:

IN FAVOR: Larry Benson, Eileen Laszlo, Councilman Michael Meixsell, John Ward, Norman Hall

OPPOSED: None

ABSTAINED: None

INELIGIBLE: Carla Abrahamson, Karen Brisben, Jake Casey, Mayor Ken Farrell, Robert Walker

The Board then considered an approval of an agreement between the Rosano Family Trust and Michael & Susan Bell, regarding the finalized variance application for 313 Philadelphia Boulevard. Chairman Hall noted that all members got a copy of the letter explaining this as well as the signed agreement between the two families. Mr. Kennedy explained the Planning Board approved the application for the Bells and subsequent to that approval the neighbors, the Rosano Family, were concerned as they did not see the notice in time to come to the meeting. They thought that they should have been consulted by the Bells and they came before the Board to ask about the appeal process.

During the application there was discussion on the air conditioner units being relocated to the rear and it was decided to do this if they needed to be replaced in the future. Mr. Kennedy then received a letter from the Architect, Mary Hearn, asking to move the garage 4 feet forward to accommodate the air conditioner units. They did consult with the Rosano Family and an agreement was reached, signed copies are before the Board this evening. Mr. Kennedy said the Planning Board can administer the change for this as: 1) it is minor, 2) there are no variances created, 3) there are no variances expanded and 4) the neighbors are okay with it.

Mrs. Brisben had no problem with this administrative change as a signed agreement was presented. Mayor Farrell felt the process should get a little more conservative on this subject. The air conditioners are right on the property line and in the side yard setback, variances were not given for this and he felt a more conservative approach should be taken if they are not within code. He felt the Board may be setting itself up for liabilities. Chairman Hall felt this is how it is supposed to work, the neighbors met and got together and this agreement will also rectify the air conditioner concerns on this property. Mr. Ward questioned Collette Ford signing as the Trustee and how does the Board now she really is? Mrs. Laszlo commented she is a lawyer and can sign for a Family Trust. She then asked Mr. Kennedy if this binds any future owner and Mr. Kennedy said yes, this has to do with the air conditioner units, there were no variances for the garage and there are no variances needed now. Chairman Hall added that if a future owner wanted to move them they would have to appear

before the Planning Board. Mr. Kennedy said this agreement they sent the Board is subject to Colette Ford signing as Trustee; Mayor Farrell said her father introduced her as Trustee when he spoke to the Board.

A motion for approval of this administrative change to the plans for 313 Philadelphia Boulevard was then made by Mr. Ward, seconded by Mr. Walker and approved by the following roll call vote:

Ayes: Carla Abrahamson, Eileen Laszlo, Councilman Michael Meixsell,  
Robert Walker, John Ward, Norman Hall

Noes: None

At this time Mr. Kennedy apologized for not letting the audience know sooner that the application for Block 19, Lot 12, 110 Beacon Boulevard, which was the hearing carried from last month, has asked for a postponement to the Wednesday, August 15<sup>th</sup> meeting of the Board. He explained the applicant's attorney, Mr. Aikin, tried to get a transcript of the June meeting but the recorder had not recorded properly and there was no tape available and this could be a problem if an appeal is filed. The applicant wants to start over and Mr. Kennedy felt this is the right thing to do and the property owners within 200 feet will be noticed for this hearing; Mr. Aikin agreed to extend the time frame for approval. Mayor Farrell added this is for a Use Variance so he is not able to hear it but wanted to have all the paperwork possible on this. Mrs. Brisben said she had sent a copy of the Minutes from the 2011 hearing on this property for the Board to review and was not aware of any other information there may be but Mr. Kennedy said he will check with the Zoning Officer, Chris Willms, to make sure there is as much information as they can get.

The Board then considered a re-application for Site Plan approval for Block 77, Lot 5, 526-528 Washington Boulevard, JTAS Realty, LLC. Applicants want to: 1) clarify the original Resolution to approve a demolition of the entire structure, 2) overturn/reverse the Zoning Officer's determination that the work performed at the site exceeded the Board's approval, 3) interpret the matter relative to the demolition issues, 4) vote to legitimize a complete demolition of the building and foundation with a westerly side setback variance of 3.8 feet and two additions to the foundation as originally approved. If this is not approved, Site Plan approval requested for construction of a new building in the same location as the previous structure. Side Yard Setback – 6 feet required, 3.8 feet proposed. Previous variance & waivers granted in October 2017: Parking spaces – 10 feet by 20 feet required, 9 feet by 18 feet proposed. Environmental Impact report waiver, Lighting & Landscaping waiver, Drainage Calculations waiver. Before this hearing started, John Ward recused himself and left the dais as he lives within 200 feet of this property.

The fees paid are on file, taxes are paid to date and the property owners within 200 feet as well as the newspaper were properly notified. Mr. C. Keith Henderson, Esq. came forward to present the application. Mr. Kennedy read some of Mr. Avakian's

memo about the hearing held on 10/17/17 for this property, to convert the existing bank building to a dentist's office with an apartment on the second floor. The parking lot and driveway were given Site Plan approval for the existing side yard setback, but, during the construction, the applicant's builder removed the entire structure which violated the Resolution; they are now back before the Board. He noted there have been extensive communications between his office with Kevin Callahan, Esq., the original attorney and Mr. Henderson; he hoped to resolve this.

The applicant t now seeks relief and there was a question of whether this building could be demolished or just one wall removed; it was felt that there are differences between what was testified to and what the Resolution said, they are here tonight to resolve this. The applicant wants relief, including a vote to clarify the Resolution or a vote on modifying the Resolution as to interpret the Zoning Officer's issues or vote to legitimize the application as originally proposed. Mr. Henderson did send out new notices and Mr. Kennedy asked if anyone had a problem with the notice and there was no response.

Mr. Kennedy then marked the following exhibits:

- A-1. The site plan, 4 sheets done by KBA Engineering and dated 12/4/17.
- A-2. A soil erosion plan done by KBA Engineering dated 4/16/18.
- A-3. An architect's plan, done by Grasso Design Group, dated 10/24/17.
- A-4. Letter from Kevin Callahan dated 5/9/18.
- A-5. The application, dated 7/5/17.
- A-6. Memo from Peter Avakian dated 9/6/17.
- A-7. Planning Board original Resolution of approval dated 10/18/17.
- A-8. Zoning Officer letter of 3/8/18.
- A-9. Letter from Joseph Kociuba dated 2/26/18.
- A-10. Letter from Kevin Kennedy dated 3/27/18.
- A-11. Letter from Kevin Callahan, Esq., dated 4/17/18.
- A-12. Transcript of the October 2017 Planning Board meeting.
- A-13. Letter from Kevin Kennedy dated 5/4/18.
- A-14. Letter from Kevin Callahan dated 3/23/18.
- A-15. Report from Peter Avakian, dated 6/8/18.

Mr. Kennedy said he has spoken with Mr. Henderson this afternoon and they agree this is a unique situation and if a Board member here tonight did not hear the original application, they can tonight, this is considered a new application.

At this point Mr. Henderson came forward and wanted to apologize for the misunderstanding with this application. The builder was going to save the existing bank building but they then discovered they had to raze it due to issues they found with the existing foundation and other items. They wanted to rebuild in the same location and there was discussion on this and there is also Case Law that says you can't rebuild if the building is totally demolished. The application gave credible evidence, at the original hearing, as to the need for variance relief and gave testimony on the negative

criteria. The building had existing for 60 years and the applicant is prepared to re-state the variances necessary.

Mr. Henderson felt the Board, back in October, did know the building may be coming down and the question was about the foundation being taken out as well. Mr. Kociuba testified about the one wall that would have to come down and this is part of the case. He felt everyone got off track and the applicant should be entitled to build with the 3.8 foot variance. There was no question on the negative criteria, the application can be justified, the question is how do we get there from here? There has been a lot of misunderstanding and they are here this evening to get this application done.

Mr. Henderson then asked for a vote to reverse the Zoning Officer's Stop Work Order. They want to build a nice office that will be valuable to Sea Girt. Chairman Hall asked they want to know if Chris Willms acted properly or not? Mr. Henderson said he did not think he was acting improperly but felt that all knew the building was coming down. Mr. Casey noted it took until page 59 of the transcript to say that "part of the building may come down." Mr. Henderson answered by stating it's now done and they want to get moving on it and fix it. The only issue was about the building coming down. Mrs. Brisben read from page 3 of Mr. Kociuba's plan, item #6 says the foundation was staying. Mr. Henderson agree that was the original plan for this application.

Chairman Hall went back to the requested vote and said the Board felt Mr. Willms followed proper procedure in this matter. Mr. Kennedy suggested to perhaps putting off this vote on the Zoning Officer until all the testimony is done. Chairman Hall asked for confirmation that tonight the application is asking for the Board to allow the building even through the miscommunications and Mr. Henderson said correct, they want to stay in the same place even though the foundation is now gone.

Mr. Henderson added that they are raising the floor 8 inches, there was a discussion on this at the October meeting and it can be found in the transcript, he again felt the issue of the building perhaps coming down was not picked up properly; he was here to clean up this mess. He said if the Board wants to take a vote they can, but, in the alternative, they want to construct as originally approved. He said that if the Board wants to hear all the original testimony again that can be done. Mr. Kennedy just asked for an explanation on the reasoning for the 3.8 foot side setback.

At this time Mr. Joe Kociuba, Professional Engineer and Planner, came forward and was sworn in. He testified at the October hearing and said that what has been said this evening is accurate. He explained they had to raise the slab and then had to take down the wall that was questioned. Later on in the design project they found they needed to raze the building, this was decided after the first hearing. Mr. Henderson asked him if he thought the Board knew this may have to be demolished and Mr. Kociuba said yes. After they took the slab down the foundation was in poor condition due to flooding issues here and it was so deteriorated no building could be put on top of it and maintained, so the existing building had to come down.

He then went over what was marked as Exhibit A-16, an office design plan for Dr. Cuzzo's dental offices, showing that the width of the building needs to go into the side setback. He showed the office and chair layout, Dr. Cuzzo needs 6 chair areas and they need a certain amount of space to work on the patients. To reduce the width of the building by 2.2 feet would change all this and they would have to deepen the building by about 15 feet which would reduce the parking lot that is needed here, thus they need the wider building. As far as the parking, this plan is an improvement over what was there, the parking in the back is better than coming out to Washington Boulevard; this layout eliminates that. He added that to have a 50 foot lot in the Commercial Zone is very small. Mr. Henderson asked if there is any negative impact here and the answer was no, no detriment to the public good; the setback exists and will have a minimal impact on air, light and open space. Mr. Kociuba's office did go out and measure between the buildings on Washington Boulevard and they found that all the buildings that do not have driveways are nonconforming except one and the footage for the Diane Turton building was 4.6 feet, so this variance here is not out of character and will fit in town. He felt this addressed the negative criteria.

Mr. Henderson asked if removing the building affected anything and Mr. Kociuba said the end product here will look exactly the same. Mr. Henderson then commented there were also variances and waivers for parking, landscaping, etc. Mr. Kennedy spoke up and said the Board had no problem in keeping them approved. Chairman Hall asked about putting in the new foundation and what impact will that have on the drainage, there is flooding there now and the property next door is experiencing flooding problems now as well. He wanted to make sure this is addressed and doesn't happen in the future. Mr. Kociuba said there will be no change to the grading and all will be better after construction. There is no drainage system there now so the water is going into this area. Once constructed they will have a new drainage pipe that will go to Sea Girt Avenue and there will be a new building. Right now there is a drainage problem on the south side. Chairman Hall asked if they could re-design the building so it can fit in and Mr. Kociuba again said they can build a conforming building but the variance here for the 3.8 feet outweighs minimum detriment. Mrs. Brisben asked Mr. Kociuba if the building can be moved over a few inches so the side yard setbacks are 4 feet and 6 feet, it is only a few inches difference, but it makes the variance less. Mr. Kociuba said they can do this with no problem.

Mayor Farrell asked about the drainage and drywells to Sea Girt Avenue, this is addressed in Sea Girt's Ordinance. Mr. Kociuba said they will be larger, designed under the State statute. Mayor Farrell said the town is concerned with stormwater on this side of town and Mr. Kociuba agreed this is a concern.

As this time the hearing was opened to the public for questions to Mr. Kociuba and, as there were none, that portion was closed. Mr. Henderson said they were done with their testimony so the hearing was again opened to the public, this time for general comments and Clifford Stack of 506 Boston Boulevard came forward. He has lived in Sea Girt for 45 years and felt putting in a new building here is a great thing, they are talking about only a foot or two and the drainage will be good, parking on Washington

Boulevard will increase as a driveway is being taken out so parking spaces will be added. He felt this application should be passed.

Mr. Henderson did summarize the application at this time and felt the Board should focus, not on the past, but what will this do for Sea Girt; it will be a tax ratable and will be an improvement over what is there now and it meets and C1 and C2 criteria. Taking the building down is now irrelevant and he requested the Board approve the Site Plan.

The Board then went into discussion – Councilman Meixsell was in favor and agreed with the application, this is improving the downtown area, he wanted to see this get straightened out as people are worried about the drainage problem here. Mr. Henderson reminded him they are under a Stop Work Order. Mrs. Brisben told Mr. Henderson that the water issue has nothing to do with the Stop Work Order and she has spoken to Mr. Willms on this; he has been trying to get the builder to take care of the drainage problem. At this time Chairman Hall read an email request from Mr. Willms asking that the stanchions for the temporary fencing be moved as they are in the sidewalk area and are impeding pedestrian traffic. He was told this will be taken care of.

Mr. Walker also was for approval and felt this is an improvement. Mr. Benson commented Commercial Use on the first floor and Residential use on the second floor fits in with the zoning requirements and he was for approval. Mayor Farrell was in favor of the application back in October and felt this was a positive thing coming in, getting rid of the driveway is good, he wants to see businesses survive in Sea Girt and said that some businesses do not make it here. He could see that the foundation needed to be demolished and he wanted to see Dr. Cuozzo get back to work and he noted he, too, is getting phone calls on the condition of the lot now. Mr. Casey said he was not in favor of this the first time around but he now is supportive of the new building but he would like to see it conform. Mrs. Abrahamson was for approval but wanted to emphasize that, in the future, if there is a deviation from the construction that is approved the proper authorities be notified so the Planning Board does not have this again. Mrs. Laszlo agreed with all that was said, she, too was in favor the first time and was dumbfounded when the building came down, she did not hear any speaking of a tear down. She felt the applicants should be very clear when they are giving testimony. Mrs. Brisben agreed with Mrs. Abrahamson on the point of notifying the proper people if there is a change, this is not the first time this has happened.

Chairman Hall said we would not be here now for this if people did not think they can just take something down. If there is a problem the applicant can go to the Construction Official and the Planning Board can do an administrative change. The Planning Board is now putting wording in all our Resolutions on demolitions, the Board is tightening up this process. He would be in favor of this application, as presented this evening.

Mr. Kennedy then went over the conditions that will be in the Resolution, all conditions of the prior approval, representation of the testimony this evening, complying with the Avakian report and State Housing Rules, drainage and drywells items to be worked out with the Engineer, complying with Board Codes, revising the plans to confirm side yard setbacks of 4 and 6 feet and clean up the area.

Mr. Kennedy then explained that two votes will be needed on this, 1) to affirm the Zoning Officer's decision to issue a Stop Work Order and 2) legitimize the rebuilding and grant the variances. It was also suggested that Mr. Willms know the Planning Board's decision so the Stop Work Order can be released. Mr. Kociuba said he will submit revised plans to the town and Mr. Henderson was okay with all that was said.

The Board then needed a motion to uphold the Zoning Officer's decision to issue the Stop Work Order and this was done by Mr. Benson, seconded by Mrs. Brisben and then by the following roll call vote:

Ayes: Carla Abrahamson, Larry Benson, Karen Brisben, Jake Casey, Mayor Ken Farrell, Eileen Laszlo, Councilman Michael Meixsell, Robert Walker, Norman Hall

Noes: None

A motion was then made for approval of the application, as presented and amended with the conditions outlined by Mr. Kennedy, this was done by Mayor Farrell, seconded by Councilman Meixsell and then by the following roll call vote:

Ayes: Carla Abrahamson, Larry Benson, Karen Brisben, Mayor Ken Farrell, Eileen Laszlo, Councilman Michael Meixsell, Robert Walker, Norman Hall

Noes: Jake Casey

#### OTHER BUSINESS:

After Mr. Ward came back on the dais, Mr. Kennedy wanted to address the Planning Board on a notice he had received from the MEL Insurance Fund regarding litigation that is happening. There are civil rights statutes and the towns are having to pay all legal fees if there is a lawsuit. The JIF Insurance & MEL Insurance want the Planning Board to go through a Training Course, to be taught by Mr. Kennedy, going through the various issues; if the Board takes this course they get extra liability protection. Mr. Kennedy explained the Land Use process is now more intense and there is more litigation, he recommended the Planning Board doing this.

Mayor Farrell said he has been Mayor for 7 years and has seen ridiculous lawsuits, Chairman Hall felt this should be done in September as the August agenda is full. Mayor Farrell gave an example of a settlement in Bernardsville regarding a

Mosque and Board members had emailed each other saying all the wrong things, emails can be shown under an OPRA request. Mr. Ward asked if this can be done other than a Board meeting and Mr. Kennedy said yes but we are present on a meeting night, however, if a member misses it the class will be taped. Mrs. Laszlo asked about the August meeting night and was told by Mrs. Brisben there are 3 applications to be heard and the Board usually hears only two, but the 110 Beacon Blvd., LLC application was to be heard tonight and they asked for a postponement to August with that agenda being full, thus 3 applications; however, one is for a conforming Minor Subdivision so that one may be short.

At this time Chairman Hall asked if anyone in the audience wanted to address the Board and Robert Kregg of Boston Boulevard came forward and wanted to speak about all the tear-downs going on in town. He can't see living next to a house being torn down and having generators being run 10 hours a day. He said that every builder that comes in needs to get temporary service put in. Chairman Hall explained that this is an issue that has to go before Mayor and Council, not the Planning Board. Mayor Farrell told Mr. Kregg that Council is preparing an Ordinance on this and they realize it is a problem, it will be introduced at an August meeting.

Mr. Kregg then asked why do we need to have 10 hours a day allowed for building work? They go from 8:00 in the morning to 6:00 in the evening every day. Mayor Farrell said that, also, is a Council matter and not Planning Board. The town has cut out Saturday work and now people want all construction to be stopped in the summer as some town do. Mr. Kregg then suggested having a voluntary fireman to wet down demolitions to keep the dust off. Chairman Hall answered this and said the building should provide this and not a town volunteer; this, too, is all for Council and not the Planning Board.

As there was no other business to come before the Board a motion to adjourn was made by Mayor Farrell, seconded by Mr. Casey and unanimously approved by voice vote, all aye. The meeting was adjourned at 8:45 p.m.

Approved: August 15, 2018