

Wednesday, October 18, 2017

SEA GIRT PLANNING BOARD

WEDNESDAY, OCTOBER 18, 2017

The Regular meeting of the Sea Girt Planning Board was held on Wednesday, October 18, 2017 at 7:12 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 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, Councilwoman Anne Morris, Ray Petronko, Robert Walker, John Ward, Norman Hall

Absent - None

Also present were Kevin Kennedy, Board Attorney and Board Engineer Peter Avakian; Board Secretary and Board Member Karen Brisben recorded the Minutes. There were 15 people in the audience.

The Minutes of the August 16, 2017 meeting were approved on a motion by Mr. Petronko, seconded by Mr. Ward and then by voice vote, all aye.

OLD BUSINESS:

The first item was approval of a Resolution for Block 20, Lot 13, 108 Chicago Boulevard, owned by Jason & Jacky Meyer, to allow construction & alterations to main dwelling & garage/garage apartment. Mr. Kennedy explained that Mr. Rubino, the attorney in this matter, had requested postponement of approval of this Resolution as there were some items that needed to be clarified in the draft Resolution he had received. The main issue was the leasing of the garage apartment and the clarification that family and friends are able to use the apartment and it will not be rented out with a lease, the occupation will be temporary. Mr. Casey questioned this as, next to his home, a family moved into the apartment and rented out the front home. Mr. Kennedy said the applicants do not intend to occupy with complete and unfettered access. Mr. Rubino had a problem with this wording and it was decided to word it so no 3rd party can rent it. After a brief further discussion, the following was presented for approval:

WHEREAS, Jason and Jacqueline Meyer have made Application to the Sea Girt Planning Board for the property designated as Block 20, Lot 13, commonly known as 108 Chicago Boulevard, Sea Girt, New Jersey, within the Borough's District 1 East Single Family Zone, for the following approval: Use Variance relief and Bulk Variance relief to effectuate the following:

- Reconfiguration of an existing garage apartment (rear dwelling); and
- Improvements to a existing single family home (front dwelling);

PUBLIC HEARING

WHEREAS, the Board held a Public Hearing on July 19, 2017, Applicants 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;*
- *Architectural Plan, prepared by Rice and Brown Associates, dated April 18, 2017, consisting of seven (7) sheets, introduced into Evidence as A-2;*
- *Plot Plan prepared by KBA Engineering Services, LLC, dated February 16, 2017, last revised April 18, 2017, introduced into Evidence as A-3;*
- *Survey, prepared by Clearpoint Services, LLC, dated November 1, 2016, unsigned/unsealed, introduced into Evidence as A-4;*
- *Review Memorandum from Leon S. Avakian, Inc., dated June 1, 2017, introduced into Evidence as A-5;*
- *Photo-board containing ten (10) photographs of the subject property taken by Michael Rubino, Esq., introduced into Evidence as A-6;*
- *Zoning Denial Letter, dated March 1, 2017, introduced into evidence as A-7;*

- *Picture of the rear dwelling taken by Amy Ledva, in or about 2011, introduced into evidence as P-1;*
- *Picture of the real dwelling taken by Amy Ledva, in or about 2010, introduced into evidence as P-2;*
- *Affidavit of Service; and*
- *Affidavit of Publication.*

WITNESSES

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

- Christopher Rice, Architect;
- Jason Meyer, Applicant;
- Joseph Kociuba, Engineer/Planner; and
- Michael Rubino, Jr., Esq., appearing

TESTIMONY AND OTHER EVIDENCE PRESENTED ON BEHALF OF THE APPLICANTS

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

- The Applicants are the Owners of the subject property.
- The Applicants have owned the subject property since approximately 2014.
- There are two (2) existing structures on the site; namely, a front dwelling and a rear dwelling.
- Details pertaining to the existing front-dwelling include the following:

Use	Single-Family Home
Number of	5

bedrooms	
Number of bathrooms	2 ½
Occupancy status	Applicants occupy the structure as their summer/ second home

- Details pertaining to the existing rear-dwelling include the following:

Use	Garage apartment
Number of bedrooms	3
Number of bathrooms	2
Occupancy status	The unit is not currently occupied. Historically, the Applicants only utilize the garage apartment for family and friends, (i.e. individuals who would otherwise have complete and unfettered access to the main dwelling on the property). The Applicants will continue to utilize the garage apartment in the same limiting and non-intense fashion as has been utilized by the Applicants in the past. That is, during their ownership, the Applicants will not officially rent/lease the garage apartment.

In order to improve the appearance and functionality of the site, the Applicants are proposing a number of improvements/modifications to both structures. The proposed improvements/modifications include the following:

Front Structure

- Interior Renovations;
- Removal of an existing front dormers;
- Installation of new/replacement dormer;
- Removal of a portion of the back of the home (so as to reduce the overall size of the same);
- The addition of a rear second story addition, over the existing first floor;
- Exterior material improvements;

Garage Apartment

- Reduction of the size of the actual garage apartment building;
 - Conversion of an existing bedroom into an actual garage;
 - Reconfiguration of the existing building;
 - Exterior material changes;
- Upon completion of the renovation/construction process, the structures will include the following:

FRONT BUILDING

(SINGLE FAMILY HOME)

FIRST FLOOR

- Kitchen
- Television Room
- Mud Room
- Dining Room
- Living Room
- Laundry Room
- Bathroom
- Front Covered Porch
- Trellis Covered Deck

SECOND FLOOR

- Master Bedroom
- Bedroom No. 2
- Bedroom No. 3
- Bedroom No. 4
- Master Bathroom
- Bathroom
- Bathroom

REAR STRUCTURE
(GARAGE / APARTMENT)

- Garage
 - Bedroom
 - Bedroom
 - Bathroom
 - Kitchen
 - Living Room
 - Dining Area
 - Laundry Closet
- The Applicants anticipate completing the improvements in the very near future.
- The Applicants will be utilizing licensed Contractors in connection with the demolition/construction/renovation process.

VARIANCES

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

USE VARIANCE: Pursuant to the Prevailing Zoning Regulations, 2 dwellings are not permitted on 1 Lot. In the within situation, there are two (2) existing dwelling units on one (1) lot. As such, Use Variance Approval is required.

EXPANSION OF NON-CONFORMING USE: As indicated, pursuant to the Prevailing Zoning Regulations, two (2) dwelling units are not permitted on one (1) lot. However, in the within situation, testimony indicated that there are two (2) existing dwelling units on the one-lot – and the same constitutes a pre-existing, non-conforming use. Through the within Application, the Applicants are requesting approval to construct/alter/expand/modify the said structures – and, pursuant to New Jersey Municipal Land Use Law, the same technically constitutes a potential expansion of a pre-existing, non-conforming use;

BUILDING COVERAGE: A maximum twenty (20%) percent allowed; whereas forty (40%) percent proposed;

REAR YARD SETBACK FOR THE REAR DWELLING: Thirty (30 ft.) feet required; whereas 2.3 feet proposed;

SIDE YARD SETBACK FOR THE REAR DWELLING: Five (5 ft.) feet required; whereas 0.9 feet proposed;

COMBINED SIDE YARD SETBACK FOR THE REAR DWELLING: Fifteen (15 ft) feet required; whereas 3.3 feet proposed.

FRONT YARD SETBACK FOR THE FRONT DWELLING: 17.18 feet is the average of adjacent lots required; whereas 13.92 feet existing and proposed;

PUBLIC COMMENTS

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

- John Ledva
- Amy Ledva

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 108 Chicago Boulevard, Sea Girt, New Jersey, within the Borough's District 1 East Single Family Zone.

3. The subject property contains two (2) detached dwelling units; namely a front dwelling (single family home) and rear dwelling (garage apartment).

4. In order to improve the overall aesthetic appeal and functionality of the site, the Applicants are proposing a number of improvements.

5. The nature/extent of the proposed improvements are set forth on the Plans as referenced herein and were also set forth during the Public Hearing Process.

6. Such a proposal requires Use Variance Approval and Bulk Variance Approval.

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

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

- There are currently two separate detached dwelling units on the site; namely, a front single-family home and a rear garage apartment. (Though the rear structure has the physical appearance of a garage, it is not a garage.) The Borough's prevailing zoning regulations do not allow two dwelling units on one lot. Thus, from a zoning standpoint, the within situation constitutes a pre-existing non-conforming use.
- Though pre-existing non-conforming uses are not favored, the New Jersey Municipal Land Use Law (and case law interpreting the same) hold that duly established pre-existing non-conforming uses are permitted to continue to exist (although the same cannot be expanded / intensified absent further / formal approval of the Municipal Land Use Board).
- Though the Application as presented could technically constitute an expansion of a pre-existing non-conforming use, the Board finds that in many ways, approval of the within Application will not expand or otherwise intensify the pre-existing non-conforming use. For instance:
 - i. The size of the existing front single-family home will actually remain the same at 1,190 square feet.

- ii. The size of the existing rear garage apartment building will actually be reduced by approximately 250 square feet.
- iii. Approval of the within Application will actually reduce the overall building coverage at the site from approximately 33.8 % to approximately 29.8%.
- iv. Approval of the within Application will also reduce the overall impervious coverage at the site from approximately 42.5% to approximately 38.1%.
- v. Approval of the within Application will not increase the number of bedrooms in the garage apartment. Rather, approval of the within Application will actually reduce the number of bedrooms in the garage apartment from 3 to 2.
- vi. Approval of the within Application will not increase the amount of living space in the rear dwelling unit (garage apartment). Rather, in that one existing bedroom in the garage apartment will be converted to an actual garage, the amount of living space associated with the second dwelling unit on site will significantly be reduced.

For all the above reasons, and for the other reasons set forth herein, the Board finds that approval of the within Application will actually reduce / minimize the extent of the pre-existing non-conforming use.

- Many times, Applicants appear before a Land Use Board in an attempt to expand, or otherwise intensify, a pre-existing non-conforming use. However, for the reasons referenced above, and for the other reasons set forth herein, the Board finds that approval of the within Application will not expand / intensify pre-existing non-conforming use at the site.
- The Board finds that the so-called “expansion” of the pre-existing non-conforming use associated with the within Application is more technical in nature than substantive.
- In the context of an Application involving a so-called expansion or modification of a pre-existing non-conforming use, the Board should, whenever possible, look for ways in which the non-conforming use / conditions can be corrected / modified / ameliorated / improved so as to minimize any intrusion / detriments otherwise associated with the pre-existing non-conforming use. The Sea Girt Planning Board has reviewed the within Application in such a context. Currently, the existing rear

structure (garage apartment) has a non-conforming rear setback (on the west side) of only approximately 0.2 feet (whereas a 3 foot rear setback is otherwise required under the current zoning regulations). The said non-conforming condition is obvious, intrusive, compromises privacy, and compromises the integrity of the overall zone plan. However, in conjunction with the within approval, a portion of the rear structure (garage apartment) will be demolished / reconstructed with a new rear setback of approximately 7 feet (i.e. an improvement of approximately 6.8 feet). The Board finds that the said issue will significantly improve the overall compatibility of the lot.

- Improving a pre-existing rear setback from approximately 0.2 feet to approximately 2.3 feet will advance the privacy / aesthetic concerns of the neighbors.
- Improving a pre-existing rear setback from approximately 0.2 feet to approximately 2.3 feet will advance the overall interests of the Borough of Sea Girt.
- Improving a pre-existing rear setback from approximately 0.2 feet to approximately 2.3 feet represents a better overall zoning alternative for the Borough of Sea Girt, and the residents thereof.
- Approval of the within Application will not increase the number of overall bedrooms at the site.
- Approval of the within Application will not increase the number of occupants at the site.
- Currently, despite prevailing zoning regulations to the contrary, there is no physical garage on the site. As indicated, although the existing rear garage apartment appears to be a garage, it is not. Rather, the rear structure simply contains a second dwelling unit. As part of the within proposal, one existing bedroom in the garage apartment will be converted to an actual garage. Thus, approval of the within application will convert the site from non-conforming (in terms of the existence of a garage) to conforming (in terms of the existence of a garage).
- There is a legitimate Borough objective in having garages located on a site, in accordance with prevailing zoning regulations.
- Compliance with municipal garage requirements represents a very positive feature associated with the within approval.

- The Application as presented requires a variance approval for building coverage. In that regard, the relevant calculations are as follows:

Maximum allowed coverage..20%
Existing coverage42.5%
Proposed coverage38.1%

Thus, although a variance is required, approval of the within Application will actual reduce the extent of the existing non-conformity.

- The Application as presented requires a rear setback for the rear dwelling. The relevant measurements in the said regard including the following:

Required rear setback.....30 feet
Existing rear setback.....0.2 feet
Proposed rear setback.....2.33 feet

Although the within Application still requires variance approval, the existing rear setback will be significantly improved.

- The improved rear setback (for the rear structure) will be beneficial for the site, the neighborhood, and the Borough of Sea Girt as a whole.
- The Application as presented requires a side yard setback for the existing rear dwelling. The relevant calculations in the said regard including the following:

Minimum side yard setback required.....5 feet
Minimum combined side yard setback required...15 feet
Existing/proposed side yard setback....0.9 feet
Existing /proposed combined side yard setback 3.3 feet.

In the within situation, the Applicants will be matching / honoring the existing setbacks – and the existing non-conforming conditions will not be exacerbated. Per the testimony and evidence presented, some elements of the existing front

dwelling (single family home) are visually unappealing – particularly with regard to the existing center dormer. In conjunction with the within proposal, the outdated / existing dormer will be removed and replaced with a more modern / functional / aesthetically pleasing dormer, which will be more in keeping with prevailing design standards within the Borough.

- In conjunction with the total renovation process for the front single family home, the Applicants have, or will, effectuate a number of improvements – including, the following:
 - i. Installation of new siding;
 - ii. Installation of a new roof;
 - iii. Installation of new windows; and
 - iv. Installation of new / updated electrical service system.

The Board appreciates the Applicants' commitment to improve the overall visual / functional appeal of the site.

- The Board is aware that the existing front single family home has 5 bedrooms; whereas, upon completion of the renovation process, the said home will have 4 bedrooms.
- Though the Board is typically weary of granting multiple variances (in the absence of extraordinarily compelling circumstance), in the within situation, the Board is aware that most of the non-conforming bulk conditions are existing conditions (some of which are not being exacerbated and some of which are being improved).
- As referenced above, the Board is also aware that the within Application must be analyzed within the confines of a pre-existing non-conforming use, and the case law associated therewith.
- The Board notes that had the within Application involved entirely new construction on vacant land, the same likely would have been much more critically reviewed / received.
- The Applicants indicated that they do not want to rent the garage apartment to 3rd parties; rather, the Applicants indicated that they would only allow the garage apartment to be temporarily occupied (at no charge) by family members and

friends who have reasonable access to the Applicants' main dwelling on the site.

- The existing garage apartment is rather modest in nature, containing only 3 bedrooms and 2 bathrooms (which will be reduced to two bedrooms as a result of the within application). Between its modest nature, and based upon the physical modifications / reductions approved herein, the Board finds that the physical continuation of the garage apartment at the site will not cause substantial detriment to the public good.
- The Board notes that the garage apartment is barely visible from the public street.
- The Board is aware that the Applicants' limited use of the garage apartment (and any future use of the garage apartment during the Applicants' ownership) will be much less intense than what would otherwise exist with a totally unrestricted second dwelling unit at the site.
- Subject to the conditions contained herein, the garage apartment will (during the Applicants' ownership) only be temporarily utilized in a limiting and non-intense fashion (i.e. by family members and friends of the Applicants who are visiting the Applicants and who have reasonable access to the Applicants' main dwelling.)
- Approval of the within Application will not increase the physical size of the existing garage apartment building.
- Approval of the within Application will not increase the footprint of the existing garage apartment.
- Approval of the within Application will not materially change the height of the existing garage apartment.
- Approval of the within Application will not increase overall parking demands associated with the site.
- Approval of the within Application will not appreciably intensify the historic and to-be-continued multiple dwelling nature of the Lot.
- As indicated, approval of the within Application will not increase the height / dimension / foundation / footprint of the existing garage apartment. Thus, it is clear that some of the non-conforming bulk conditions relative to the existing garage

apartment are existing conditions which will not be exacerbated as a result of the within approval.

- Approval of the within Application will essentially continue a complete owner-occupied arrangement at the site, which in general terms, has many benefits.
- The improvements approved herein will be functional, practical, and aesthetically pleasing.
- The proposed improvements will improve the overall aesthetic appeal of the site.
- The design of the improvements are attractive and will be architecturally/aesthetically compatible with the neighborhood.
- Per the testimony and evidence presented, and subject to the conditions contained herein, the renovation approved herein will not detrimentally change / affect the grading at the Site.
- The architectural/aesthetic benefits associated with the proposal outweigh the detriments associated with the Applicants' inability to comply with all of the specified use and bulk standards.
- The architectural design of the proposed improvements will not be inconsistent with the architectural character of other similar homes / structures in the area.
- Approval of the within Application will allow the Applicants to more functionally and comfortably use and enjoy the property (while simultaneously eliminating some of the existing, non-conforming bulk conditions)
- Approval of the within Application will not materially intensify the existing and historic multi-dwelling nature of the site.
- Subject to the conditions contained herein, the improvements approved herein will not over-power / over-whelm the subject Lot.
- The improvements approved herein are attractive and upscale, in accordance with Prevailing Community Standards.
- Approval of the within Application as amended, will not detrimentally affect or otherwise exacerbate existing parking requirements at the site.

- Sufficiently detailed testimony / plans were presented to the Board.
- The proposed renovation should nicely complement the property and the neighborhood.

. Approval of the within Application, as amended, will have no known detrimental impact on adjoining property owners and, thus, the Application can be granted without causing substantial detriment to the public good.

- Approval of the within Application, as amended, 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, as amended, satisfies the Statutory Requirements of N.J.S.A. 40:55D-70(c) (Bulk Variances) and N.J.S.A. 40:55D-70(d) (Use Variance).
- The Application as presented, and subject to the conditions contained herein, will have a minimal impact on the surrounding neighborhood.
- The Board Members engaged in a civil and good faith debate as to the merits of the overall proposal and the complicated site. On the one hand, the Board Members acknowledged the benefits and positive features associated with the application, as referenced in the within Resolution. On the other hand, Board Members also expressed questions, comments, and concerns regarding elements of the proposal – including, the following:
 - i. A concern regarding the overall site, and uses associated therewith;
 - ii. A concern regarding the overall non-conforming use;
 - iii. A concern regarding the overall density at the site;
 - iv. A concern regarding the lack of any perpetual restrictions associated with the leasing/renting of the rear dwelling unit;

After debate and analysis, a majority of the Board determined that the benefits of approval outweighed the detriments associated with the application.

Based upon the above, and for the other reasons set forth herein, 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 Applicants have agreed, to comply with the following conditions:

- a. The Applicants shall comply with the terms and conditions of the Leon S. Avakian, Inc. Review Memorandum, dated June 1, 2017, (A-5).
- b. The Applicants shall comply with all promises, commitments, and representations made during the Public Hearing process.
- c. During the Applicant's ownership (as loosely defined herein), the garage apartment shall not be rented / leased / occupied by 3rd parties. Rather, during the Applicants' ownership (as loosely defined herein), the garage apartment is only to be utilized (as a convenience) (and at no charge to the temporary guests) for the temporary shelter of the said family members and friends of the Applicants who are simultaneously interacting with the occupants in the main single-family dwelling on the site. That is, during the Applicants' ownership (as loosely defined herein), the garage apartment shall not be independently leased / rented / occupied (apart from the principal single-family dwelling on the site).
- d. During the Applicants' ownership (as loosely defined herein), the garage apartment shall not be utilized as a 2nd residential structure on the site, except for the limited temporary sheltering of family members and friends, as otherwise specifically set forth herein.

NOTE: For purposes of the within Resolution, including conditions "c" and "d" herein, the term "Applicants' ownership" (and similar/related terms) shall be liberally construed so as to include the following:

- The period of time when the subject property is owned by either one or both of the Applicants;
 - The period of time when the subject property is owned by a company, corporation, limited liability company, or other type of entity in which either one or both of the Applicants (or agents thereof) are a principal;
 - The period of time when the property is owned by the Estate of one or both of the Applicants;
 - The period of time when the subject property is owned by the heirs / beneficiaries of one or both of the Applicants (except for fair market value transfers made to the Applicants' heirs/beneficiaries).
- e. There shall be no physical change / modification / enlargement / modernization / expansion / intensification to the garage apartment, absent further formal approval of the Sea Girt Planning Board.
 - f. To the extent necessary, the Municipal Building Office / Construction Office (or designee) shall confirm that the garage apartment approved herein satisfies any prevailing / applicable occupancy standards.
 - g. Unless otherwise waived by the Board Engineer, the Applicants shall submit Grading Plans / Drainage Plans so that the Board Engineer can review / approve the same, and so as to further confirm that any drainage run-off does not go onto adjoining properties.
 - h. The Applicant shall comply with all prevailing affordable housing regulations / contributions / directives / requirements as established by the State of New Jersey, the Borough of Sea Girt, C.O.A.H., the Court System, and any other Agency having jurisdiction over the matter.
 - i. The Applicants shall comply with all prevailing building code / construction code requirements.
 - j. The Applicants shall cause the Plans to be revised so as to portray and confirm the following:
 - The elimination of the rear door / stoop on the rear garage apartment;
 - That the air conditioning equipment / mechanicals shall be placed in zoning-compliant locations;

- That the air conditioning equipment/ mechanical shall not be placed on the roof of the garage apartment;
 - That the air conditioning equipment/ mechanicals shall not be placed in the 7 foot rear area of the to-be-modified rear structure (garage apartment); and
 - The inclusion of a dry-well on the site (the details of which shall be reviewed and approved by the Board Engineer).
- k. Per the Board Engineer's Review Memorandum, the Applicants shall submit a signed / sealed survey.
- l. The Applicants shall manage storm-water run-off during and after construction (in addition to any other prevailing / applicable requirements / obligations.)
- m. The Applicants 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
- n. If applicable, the proposed structure shall comply with applicable Provisions of the Americans with Disabilities Act.
- o. 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.
- p. The Applicants 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.
- q. The Applicants 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.

- r. The Applicants shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.
- s. If required by the Board / Borough Engineer, the Applicants shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.
- t. Unless otherwise agreed by the Planning Board, the approval shall be deemed abandoned, unless, within 24 months from adoption of the within Resolution, (or any agreed upon extension) the Applicants obtain a Certificate of Occupancy (if necessary) for the construction / development approved herein.

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 the proposed improvement, or for any damage which may be caused by the development / renovation.

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

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

Noes: None

Not Eligible to Vote: Carla Abrahamson, Mayor Ken Farrell, Councilwoman Anne Morris, John Ward, Norman Hall

The Board then turned to the consideration of a Resolution for Block 29, Lot 4, 108 Seaside Place, owned by Stephen & Patricia Valentino, approval for bulk variances for driveway, denial for pool depth.

Mr. Kennedy reminded all that this Resolution was for approval for a pool, patio and driveway bulk variances; he apologized for getting this Resolution to all at such a short time before the meeting but this was complicated. The Resolution is broken down into 3 votes, some of the terms were technical. The 3 votes are for 1) driveway/curb cuts, 2) pool setbacks & pool approval, 3) pool elevation denied. He then spoke of one of the conditions that was for 3 drywells and he received a call from Mr. Rubino, the attorney for this application, on this drywell condition. Mr. Kennedy prepared the Resolution for approval of 3 drywells but this should be discussed this evening by the Board; Mr. Rubino is here and this needs to be clarified as this condition was agreed upon if the pool elevation was approved and it was not. Also, it was a condition that the pool should be concrete and saltwater. Mr. Avakian commented these are not mandatory guidelines.

Mr. Kennedy noted page 28 of the Resolution that the construction equipment will be out of the area of the drywell construction and there will be a backflow preventer. This Resolution can be adopted this evening but they need to discuss these conditions. Mr. Hall asked if this means there will be no drywells now and Mr. Avakian said he had spoken to Mr. Kennedy on this. He was under the impression it was clear they were going to install drywells, he could understand the thought of why have drywells if there is no pool, but if the applicant wants to install the pool with the setback variances that changes this. Mr. Casey asked about the backwash requirement and Mr. Avakian said

it applied, this will not go into our sewer system and that is part of the Resolution. However, Mr. Rubino felt the clear inference was they were violating the high-water line and that part was not approved. Mr. Avakian felt the drywells should be put in, they are to be put in with any future installation of a swimming pool.

Mr. Kennedy then said there are 6 variances here: 1) driveway, 2) curb cut (the first vote), 3) garage setback, 4) pool/patio setback, 5) another pool setback (the second vote), 6) pool elevation (the third vote). He will add the drywells to the pool setbacks (the second vote). Mr. Ward said his concern was that he approved this based on drywells being put in, all new construction in town needs drywells; he would have voted no if there were no drywells. Mr. Petronko agreed and felt that today you have to consider drywells even if the pool is not in the high-water table and drywells have to be considered for the whole project; Mr. Avakian agreed. Mr. Rubino said the testimony for drywells was related to the pool and not for putting in curbs or a wide driveway. If drywells are put in for the pool setbacks that is okay but he did not see this for the driveway variance. They said they would put these in to capture water due to the high-water table invasion. Chairman Hall asked if the Valentinos are going to put in a pool and Mr. Rubino said "probably not" as it would have to be a 3 foot deep pool and he did not know how they can do that. Chairman Hall then asked if there will be no drywells unless they put in a pool and Mr. Rubino said yes, he did not think they should be stuck with three drywells.

Mayor Farrell felt the first variance for the driveway made sense and if going along with the setbacks is okay that makes sense. However, drywells have become an Ordinance requirement since they built this home. Mr. Rubino commented to have three drywells was extra. Chairman Hall was under the impression that this is conditioned on them putting in a pool. Mr. Avakian spoke up and said the only way they will work is if it is a condition in the Resolution, this is what the Zoning Officer will be looking for. Mrs. Brisben asked Mr. Rubino how many drywells are they willing to put in and Mr. Rubino did not want a requirement to put in drywells unless they put in a pool.

Mr. Casey asked if the setback approvals created any issues and Mr. Rubino said some were connected with the pool; Mr. Kennedy then asked if there is no pool will there be a patio and Mr. Avakian said that is in the second vote and it is for setbacks for the pool patio & pool itself, so the second vote all applies to the pool. Mr. Rubino offered to put in two drywells if a pool is constructed and they will work with Mr. Avakian on this. There was then a brief discussion on putting the high-water table calculations in the Resolution and Mr. Avakian said it varies and it is shown in the final plan done by Mr. Carpenter. Mrs. Brisben asked Mr. Rubino for 5 sets of a revised plan when all is done so the Zoning Officer/Construction Dept. get the right plans.

The following amended Resolution was then presented (note: Eileen Laszlo had recused herself from hearing the application and was not eligible to partake in the vote):

WHEREAS, Stephen and Patricia Valentino have made Application to the Sea Girt Planning Board for the property designated as Block 29, Lot 4, commonly known as 108 Seaside Place, Sea Girt, New Jersey, within the Borough's District 1 East Single-

Family Zone, for the following approval: Bulk Variances in conjunction with a request to construct an in-ground pool, patio, and a new driveway apron / curb cut; and

PUBLIC HEARING

WHEREAS, the Board held a Public Hearing on August 16, 2017, Applicants 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:

- *Development Application, introduced into Evidence as A-1;*
- *Application Addendum, introduced into Evidence as A-2;*
- *Zoning Officer Denial Letter, introduced into Evidence as A-3;*
- *Grading / Variance Plot Plan, prepared by R.C. Associates Consulting, Inc., dated March 2, 2016, last revised January 25, 2017, introduced into Evidence as A-4;*
- *As-built Plan, prepared by Paul K. Lynch, PLS, dated August 2, 2016, introduced into Evidence as A-5;*
- *Leon S. Avakian, Inc. Review Memorandum, dated October 6, 2016, last revised February 8, 2017, introduced into Evidence as A-6;*
- *Supplemental Review Memorandum from Leon S. Avakian, Inc., dated June 21, 2017, introduced into Evidence as A-7;*
- *Communication from Michael R. Rubino, Jr., Esq., to the Board Secretary, dated August 7, 2017, introduced into Evidence as A-8;*

- *Minutes of the December 21, 2016 Sea Girt Planning Board Meeting, introduced into Evidence as A-9;*
- *Pool Grading / Variance Plan, prepared by R.C. Associates Consulting, Inc., dated March 2, 2016, introduced into Evidence as A-10;*
- *Picture Board, containing 6 photographs of the subject property and surrounding area, taken by Michael Rubino, Jr., Esq., on or about August 16, 2017, introduced into Evidence as A-11;*
- *Pool Grading / Variance Plot Plan, prepared by R.C. Associates Consulting, Inc., dated March 2, 2016, last revised February 23, 2017, introduced into Evidence as A-12;*
- *Affidavit of Service; and*
- *Affidavit of Publication.*

WITNESSES

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

- Ray Carpenter, Professional Engineer / Professional Planner;
- Stephen Valentino, Applicant;
- Patricia Valentino, Applicant;
- Michael R. Rubino, Jr., Esq., appearing.

WHEREAS, Peter Avakian, P.E., P.L.S., P.E., the Board Engineer, was also sworn with regard to any testimony / information he would provide in connection with the subject application; and

TESTIMONY AND OTHER EVIDENCE PRESENTED ON BEHALF OF THE APPLICANTS

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

- The Applicants are the Owners of the subject property.
- The Applicants have owned the subject property since approximately 2007. (The subject property has been in the Applicants' family since approximately 1961).
- When the Applicants acquired an ownership interest in the subject property, there was a previously existing single-family home at the site.
- The previously existing single-family home at the site had many practical / functional problems, including serious foundation issues.
- As a result, the Applicants arranged for the previously existing single-family home to be demolished.
- Thereafter, the Applicants arranged for a new single-family home to be constructed at the site (in or about 2015).
- The Applicants utilize the subject home as a 2nd family home (all year long).
- In order to increase / improve the overall comfort and functionality of the home / property, the Applicants propose the following:
 - Construction / installation of an in-ground pool;
 - Construction of a patio;
 - Installation of a new driveway apron / curb-cut.
- Details pertaining to the proposed pool, as amended, include the following:

Type of Pool:	In-ground pool
Dimensions:	Per Plans
Pool water depth:	6 Ft. (maximum)
Pool shape:	Irregular – kidney-like
Pool location:	Off of Sea Girt Avenue
Maximum water surface area:	460 SF

Depth of pool at shallow end:	3 Ft.
Seasonal high-water table details:	The proposed shallow end of the swimming pool is, per prevailing requirements, 2 Ft. above the seasonal high-water table. However, the bottom elevation of the deep end of the pool is, less than 2 Ft. above the seasonal high-water table and therefore, Variance relief is required.

- Details pertaining to the proposed patio include the following:

Size:	Per Plans
Materials:	Paver (Per Plans)
Location:	Surrounding Pool

- Details pertaining to the proposed driveway apron / curb-cut include the following:

Driveway width:	21 Ft.
Location:	Off of Sea Girt Avenue
Curb-cut width:	18 Ft.

- The Applicants anticipate that the said work will be completed in the very near future.
- The Applicants will be utilizing licensed contractors in connection with the renovation process.

VARIANCES

WHEREAS, the Application as amended, requires approval for the following

Variances:

DRIVEWAY WIDTH: Maximum 14 ft. allowed; whereas 21 ft. proposed.

CURB-CUT WIDTH: Maximum 13 ft. allowed; whereas 18 ft. proposed.

POOL/GARAGE SETBACK: 10 ft. required; whereas 8.84 ft. (to the garage) proposed.

POOL SETBACK: (The pool setback from the street line Sea Girt Avenue): 15 ft. required; whereas 10 ft. proposed.

PATIO SETBACK FROM SEA GIRT AVENUE: 15 ft. required; whereas 5.17 ft. proposed.

BOTTOM OF POOL ELEVATION; Per the Prevailing Borough Ordinance, the bottom elevation of the pool structure shall not be less than 2 ft. above the seasonal high ground water table. In the within situation, a portion of the proposed pool is located less than 2 feet above the seasonal high-water table, (and actually in the high-water table) thereby necessitating Variance relief.

PUBLIC COMMENTS

WHEREAS, the following members of the public expressed questions, comments, statements, and / or concerns in connection with the Application:

- John Lucid
- Robert Kregg

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 portions of the Application are **approved**, while portions of the Application are simultaneously **denied**. Specifically, given the nature of the Application, the nature of

the requested relief, and the controversial nature of portions of the Application, at the request of the Applicant, and with the Board's consent, the Board vote was separated into 3 separate votes. Towards that end, the Board votes included the following:

- a. Vote on the Driveway apron / curb-cut width – **approved**;
- b. Vote on the Pool / patio / garage setbacks – **approved**; and
- c. Vote on the impermissible Pool location in the seasonal high-water table – **denied**.

In support of the aforementioned decisions, 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 108 Seaside Place, Sea Girt, New Jersey, within the Borough's District 1 East Single-Family Zone.
3. The subject property is located on a corner lot.
4. The subject property currently contains a single-family home.
5. Single-family use is a permitted use in the subject Zone.
6. The Applicants propose the following:
 - Installation of an in-ground pool;
 - Installation of a patio; and
 - Installation of a new driveway apron / curb-cut.
7. Details pertaining to the proposed improvements were submitted on the Plans and were discussed, at length, during the Public Hearing Process.
8. Such a proposal requires Bulk Variance relief.

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

10. With regard to the specific aspects of the Application, and the specifically requested relief, the Board notes the following:

GENERAL

- The Applicants initially submitted Plans, and the initially submitted Plans were publicly reviewed by the Planning Board at the Hearing of December 21, 2016. The Board Members had many questions, comments, criticisms, concerns, and objections associated with the initial proposal. As such, upon further review, and at the request to the Applicants, the December 21, 2016 Public Hearing was adjourned.
- The Applicants thereafter arranged for the Plans to be further modified, and the Applicants returned to the Planning Board on August 16, 2017.
- At the commencement of the August 16, 2017 Public Hearing, the Board Attorney discussed several important procedural issues / concerns – including:
 - a. A concern that so much time had elapsed between the December 21, 2016 Public Hearing and the August 16, 2017 Public Hearing;
 - b. A concern that there were several substantial revisions to the Plans between the 2 Public Hearing dates;
 - c. A concern regarding the change of membership associated with the Sea Girt Planning Board between the first meeting of December 21, 2016 and the continued Hearing of August 16, 2017;
 - d. A concern that the Board recently learned that the Borough's tape recorder malfunctioned during the December 21, 2016 meeting,

thereby preventing absent Board Members from listening to the same;

- e. A concern that the malfunctioning tape recorder would prevent Board Members (who were absent from the December 21, 2016 meeting) from participating on August 16, 2017;
- f. A concern that the lack of transcripts from the December 21, 2016 meeting could potentially and fatally compromise any judicial review of the ultimate Board decision, should there be any litigation associated with the matter;
- g. Recognition that the Applicant's representatives re-noticed for the August 16, 2017 Public Hearing; and
- h. Recognition that given the length of time which transpired between the 2 meeting dates, given the nature of the Plan revisions, and given the change of board membership during the time gap, the Applicants' representatives should essentially re-commence the entire testimony / presentation / case.

As a result of the above, the Board Attorney recommended that the Board treat the August 16, 2017 presentation as a new Application, and that the Applicants re-present all testimony (as if the December 21, 2016 meeting never occurred).

- The Board Members discussed the said issue and expressed support for such a proposal.
- Under the circumstances, the Applicants' Attorney also consented to such a re-commencement of the case.
- The Board finds that under the circumstances, the re-commencement of the testimony / evidence is fair and appropriate, and the same protects and promotes the interests of the Borough of Sea Girt, the Sea Girt Planning Board, the Applicants, and the public.

- The re-commencement of the case at the August 16, 2017 Public Hearing did not jeopardize the interests of the Applicants, the Board, or the Public.

DRIVEWAY APRON / CURB-CUT PORTION OF APPLICATION

APPROVED

- As indicated, the Application as amended requires approval for the following Variances pertaining to the driveway apron and curb-cut:

DRIVEWAY WIDTH: Maximum 14 ft. allowed; whereas 21 ft. proposed.

CURB-CUT WIDTH: Maximum 13 ft. allowed; whereas 18 ft. proposed.

- Between the December 21, 2016 Public Hearing and the August 16, 2017 Public Hearing, the width of the driveway opening (curb-cut) was reduced from a non-conforming 22 ft. to a non-conforming 21 ft. Though a Variance is still necessary (given that the Borough Ordinance allows a maximum width of 14 ft.), the said reduction represents an improvement in the Application.
- The Board appreciates the good-faith efforts of the Applicants to reduce the nature / extent of the non-conformity.
- The Board recognizes that the curb-cut as initially proposed by the Applicants was 20 ft. wide, and that the Applicants reduced the same to 18 ft. wide, so as to be more compliant with the Prevailing Zoning Regulations. The Board appreciates that Applicants' good-faith efforts in the said regard.
- The Board is aware that parking in the immediate area is only available on one side of the street.
- The Board is aware that approval of the within portion of the Application will likely help remove some vehicles from the street.
- Per the testimony presented, the subject site previously had a 20-ft. wide driveway.

- Per the testimony presented, the Applicants do utilize the garage for parking purposes, and will continue to utilize the garage in the said fashion.
- The somewhat irregular shape of the Lot, and the angle at which Sea Girt Avenue borders the subject Lot compromises / complicates the ease within which vehicles can enter / exit the site. Thus, the Variances for a wider than permitted driveway and a wider than permitted curb-cut will help facilitate such vehicular entrance / exit into the site.
- In conjunction with the above points, the wider than permitted driveway/curb-cut will help promote safety at the site.
- The Board is aware that the subject property has frontages on 2 streets (namely, Sea Girt Avenue, and Seaside Place), thereby compromising the ability of the Applicants to satisfy all Prevailing Bulk Requirements.
- Approval of the referenced Variances will not compromise public health and safety.

Based upon the above, and for other reasons set forth during the Public Hearing Process, the Board is of the unanimous opinion that the requested relief (regarding the driveway apron width and the curb-cut width) can be granted without causing substantial detriment to the public good.

MOTION TO CONDITIONALLY APPROVE THE DRIVEWAY APRON / CURB-CUT PORTION OF THE APPLICATION WAS MADE BY MR. PETRONKO AND SECONDED BY COUNCILWOMAN MORRIS.

THE FOLLOWING INDIVIDUALS VOTED TO APPROVE THE DRIVEWAY APRON / CURB-CUT PORTION OF THE APPLICATION:

Carla Abrahamson, Larry Benson, Karen Brisben, Jake Casey, Mayor Ken Farrell, Councilwoman Anne Morris, Ray Petronko, John Ward, Norman Hall

THE FOREGOING RESOLUTION WAS OFFERED BY MAYOR FARRELL, SECONDED BY COUNCILWOMAN MORRIS AND THEN BY THE FOLLOWING ROLL CALL VOTE:

Ayes: Carla Abrahamson, Larry Benson, Karen Brisben, Jake Casey, Mayor Ken Farrell, Councilwoman Anne Morris, Ray Petronko, John Ward, Norman Hall

Noes: None

Not Eligible to Vote: Robert Walker

POOL / PATIO / GARAGE SETBACKS

APPROVED

- Between the December 21, 2016 Public Hearing and the August 16, 2017 Public Hearing, the Plans were revised so as to reduce the size of the pool, from 550 SF to approximately 460 SF. The said reduction further minimized the potentially adverse impact associated with the Applicants' proposal.
- The reduction of the pool size, as referenced above, simultaneously increased the distance between the home and pool from a non-conforming 9.35 ft. setback to a compliant 10 ft. setback.
- The reduction of the size of the pool, as referenced above, and the corresponding increase in the distance between the pool and the home, eliminated the need for 1 Variance.
- The Board Members appreciate the Applicants' good-faith efforts in revising the Plans so as to eliminate a Variance.
- Between the December 21, 2016 Public Hearing and the August 16, 2017 Public Hearing, the Applicants caused the Plans to be revised so as to increase the pool setback (off of Sea Girt Avenue) from a non-compliant 6.5 ft. to non-compliant 10 feet. Though a Variance is still required, the said increase represents a significant improvement.
- The Board appreciates the Applicants' good-faith efforts to significantly reduce the extent of the pool setback relief.
- The proposed pool is a permitted Accessory Use in the subject Zone.
- The Prevailing Section of the Borough's Ordinance requires that a pool have a maximum water surface area of 800 square feet. In the within situation, the Applicants are proposing a pool of approximately 460 square feet, which conforms with the Borough's Prevailing Requirements.

- A majority of the Board notes that the pool approved herein is not overly large.
- A majority of the Board furthermore notes that a further reduction in the size of the proposed pool would neither be practical nor feasible.
- The non-conforming pool will be appropriately shielded with landscaping / fencing.
- The proposed landscaping / shrubbery / plantings will appropriately shield the neighbors and public from the proposed pool improvements.
- The proposed pool and other related improvement will be appropriately landscaped.
- The pool and those amenities specifically approved herein will be located in practical and reasonable locations.
- The proposed and to-be-maintained landscaping / fencing will minimize the impact that approval will have on the adjoining owners and the neighborhood.
- Approval of the within Application will not increase the height of the existing home.
- Subject to the conditions contained herein, the Applicants' site / lot can physically accommodate the improvements proposed/approved herein.
- Subject to the conditions contained 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 homeowners.
- Single-family use as approved / continued herein is a permitted use in the subject Zone.
- Subject to the conditions contained herein, the location of the specifically permitted improvements is practical and appropriate.

- The existing Lot is conforming in terms of Lot area (i.e. 7,500 SF is required, and 10,336 SF exists).
- Subject to the conditions contained herein, the pool-related improvements specifically approved herein will not overpower / over-whelm the subject Lot.
- The pool improvements specifically approved herein are attractive and upscale, in accordance with Prevailing Community Standards.
- Approval of the within portion of the Application will not detrimentally affect existing parking requirements at the site.
- Sufficiently detailed testimony / plans were presented to the Board.
- Subject to the conditions contained herein, the proposed pool should nicely complement the property and the neighborhood.
- Subject to the conditions contained herein, the proposal will not appreciably intensify the existing single-family nature of the lot.
- The proposed pool / patio will be significantly shielded with landscaping / fencing, thereby minimizing any aesthetic impact on adjoining properties.
- Subject to the conditions contained herein, approval of the within portion of the Application will not compromise health and safety of the occupants.
- Subject to the conditions contained herein, the size of the proposed pool / patio is reasonable under the circumstances.
- The proposed pool equipment is located in the rear yard area, as required by the Prevailing Borough Ordinance.
- Notwithstanding the above, for the reasons set forth herein and during the Public Hearing process, a majority of the Board is of the opinion that the benefits of granting the approval out-weigh the detriments associated with the same.

- Additionally, the aesthetic benefits associated with the proposal outweigh the detriments associated with the Applicants' inability to comply with all of the specified bulk standards.
- The design of the improvements specifically approved herein will not be inconsistent with the architectural character of similar improvements on other single-family lots in the area.
- Subject to the conditions set forth herein, the overall benefits associated with approving the within portion Application outweigh any detriments associated with the same.
- Subject to the conditions contained herein, approval of the within portion of the Application will have no known detrimental impact on adjoining property owners and, thus, the Application can be granted without causing substantial detriment to the public good.
- The improvements to be installed in connection with the portion of the Application will not be inconsistent with other similar improvements located within the Borough.
- Subject to the conditions contained herein, approval of the within portion of the 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 instant portion of Application as presented and modified 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 (associated with the pool / patio / garage setback) can be granted without causing substantial detriment to the public good.

MOTION TO CONDITIONALLY APPROVE THE POOL / PATIO / GARAGE SETBACK PORTION OF THE APPLICATION WAS MADE BY MRS. ABRAHAMSON AND SECONDED BY MR. WARD.

THE FOLLOWING INDIVIDUALS VOTED TO APPROVE THE POOL / PATIO / GARAGE PORTION OF THE APPLICATION:

Carla Abrahamson, Larry Benson, Karen Brisben, Jake Casey, Mayor Ken Farrell, Ray Petronko, John Ward, Norman Hall

THE FOREGOING RESOLUTION WAS OFFERED BY MR. PETRONKO, SECONDED BY MR. WARD AND THEN BY THE FOLOWING ROLL CALL VOTE:

Ayes: Carla Abrahamson, Larry Benson, Karen Brisben, Jake Casey, Mayor Ken Farrell, Ray Petronko, John Ward, Norman Hall

Noes: None

Not Eligible to Vote: Councilwoman Anne Morris, Robert Walker

POOL ELEVATION / SEASONAL HIGH-WATER TABLE

DENIED

- The Application as presented and modified required a Variance for a portion of the bottom pool elevation impermissibly invading / encroaching into the seasonal high-water table. Specifically, the Prevailing Borough Ordinance provides that the bottom elevation of the pool structure shall not be less than 2 ft. above the seasonal high ground water elevation. In the within situation, the deep end of the pool is impermissibly close to the seasonal high-water table and thus, Variance relief is required.
- The Board Members reviewed extensive testimony / information regarding the said issue (including extensive technical information).
- In Sea Girt, in 2017, the Board, Borough representatives, and the public are, justifiably, concerned about storm-water management-related issues, flooding issues, grading issues, and drainage issues, etc.
- The nature of the town, the nature of the area, the Borough's proximity to the Atlantic Ocean, Wreck Pond, and other water sources, and its history of flooding and flood-related problems mandate that the Application, and the specifically

requested Variance relief, be appropriately and thoroughly identified / analyzed.

- The Board Members analyzed the said Application, and the specifically requested Variance relief, in a very intense and good-faith fashion.
- The subject Ordinance at issue herein requires that the bottom elevation of a pool be no less than 2 ft. above the seasonal high-water table. The idea is that such a restriction will protect the bottom elevation of the pool from rising ground water. Per the testimony and evidence presented, when the ground water rises, and there is no place for the rising ground water to be displaced (such as would happen in the event a pool was placed too close to the seasonal high-water table), then, in that event, water can gather, puddle, travel onto adjacent properties, flood basements, flood streets, etc. In the within situation, the Applicants have requested a Variance, so that they can place the bottom elevation of the pool too close to the seasonal high-water table (i.e. closer than the prevailing regulations allow). Though the Ordinance is founded on science and logic, the Board Members also understand the Public Policy purposes attempting to prevent rising ground waters from being unleashed on the Community.
- The Board is aware that in certain adverse weather situations, the displaced rising ground water can cause and/or otherwise contribute to water seepage, water ponding, flooded basements, flooded yards, flooded streets, and the like.
- As indicated, the prevailing Ordinance requires that there be a minimum distance between the bottom elevation of the pool and the seasonal high-water table. Per the testimony and evidence presented, the concept is that if the bottom elevation of the pool is too close to the seasonal high-water table, and something triggers the ground water to rise, then, in that event, the impermissibly close bottom elevation of the pool, and simultaneously rising ground water, will cause, or otherwise contribute to, flooding, ponding, drainage issues, and the like.
- Per the testimony and evidence presented, requiring that pools be placed a minimum distance out of the seasonal high-water table will likely prevent, or at least minimize, the possibility of adverse flooding/ponding.

- In the within situation, the Applicants are proposing to install the bottom elevation of the pool too close to the seasonal high-water table, and actually in the high-water table. The Applicants' representatives did not provide sufficient or legally compelling testimony/evidence as to why such relief could or should be granted.
- The benefits of enforcing the Ordinance include the real possibility of minimizing the opportunity of having flooded yards/flooded basements/flooded streets – and the Board recognizes that such a concept is not just beneficial for one homeowner or just one area of town, but **all** residents of the Borough of Sea Girt.
- The subject Ordinance is designed to benefits all homeowners, neighbors, and the Public at large – and the Applicants' representatives did not provide sufficient or legally compelling evidence to justify a deviation from the same.
- Per the testimony and evidence presented, the subject Ordinance is also designed to protect installed pools from hydrostatic pressure rising up against the pool and causing movement / displacement/damage to the pool. Towards that end, the Applicants' representatives did not provide sufficient testimony to assuage the Board's concerns in the said regard.
- The Board finds that granting relief under the within circumstances would not be consistent with the best practices associated with prevailing Storm-Water Management regulations.
- The Board Members engaged in a good-faith debate as to the impact by Variance relief would have on the site, the neighborhood, and the Borough of Sea Girt as a whole.
- Those arguments in support of granting the requested Variance relief included the following:
 - i. Recognition that the size of the pool was reduced from approximately 555 SF to approximately 460 SF, thereby reducing the extent of the overall impermissible encroachment into the water table.

- ii. Recognition that only a portion of the pool (i.e. approximately 230 sq. ft.) would impermissibly encroach into the water table (and the remaining portion of the pool would be in a compliant non-water table invasive location).
- iii. Recognition that the Applicants will install dry-wells on the site to help mitigate any potential adverse grading / drainage/flooding issues associated with the proposed pool.
- iv. Recognition that the most directly affected neighbor attended the Public Hearing and publicly endorsed support / approval of the Application.
- v. Recognition that there are many other existing pools in the Borough and in the area – including pools located in the Applicants’ immediate neighborhood.
- vi. Recognition that if approved, the pool would only be open approximately 4 months of the year, thereby minimizing/mitigating any adverse impact associated with the same, and the impermissible intrusion into the seasonal high-water table.
- vii. Recognition that the property is somewhat irregularly shaped (i.e. the property is not a traditional rectangle); thereby further evidencing the need for variance relief.

Arguments against the granting of the Variance relief included the following:

- i. Recognition that there is, and should be, general apprehension about granting Variance relief in the absence of legally compelling circumstances.
- ii. Recognition that the Borough fairly recently adopted the subject Ordinance, so as to minimize the possibility or likelihood of the ill effects of flooding/drainage.

- iii. Recognition that, in contravention of the purpose of the subject Ordinance, as aforesaid, approval of the within Application would likely cause, or contribute towards, or otherwise aggravate flooding/drainage issues within the Borough.
- iv. Recognition that the Applicants just constructed the new single-family home on the site in or about 2015, and that had they more properly / thoroughly planned, they could have designed a smaller home which would simultaneously allow for a compliant or more compliant pool/pool location.
- v. Recognition that in the home planning stages from several years ago, the Applicants apparently affirmatively chose to have as large a home as possible on the lot (per the Prevailing Zoning Regulations), thereby leaving no extra room for additional home amenities, such as the pool proposed herein (in the absence of obtaining Bulk Variance relief).
- vi. Recognition that Agents of the Borough have analyzed the persistent and serious grading / drainage / flooding related issues over the last 10-12 years before recently committing to, and adopting, the subject Ordinance, for which the Applicants now seek relief.
- vii. Recognition of the extensive flood-related issues the Borough of Sea Girt has experience and / or otherwise suffered over the last recent years / decades.
- viii. Recognition of the extensive flood-related issues / damage residents of Sea Girt have suffered / experienced over the last several years and decades.
- ix. Recognition that while a pool is certainly an understandably beneficial feature for a home, in 2017, the pool installation must also be analyzed in the context of the grading / drainage byproducts associated with the installation of the same.

- x. Recognition that the Borough of Sea Girt has committed an extensive amount of public funds, time, and resources in identifying flood improvement/flood mitigation improvements – and that adoption of the subject Ordinance (for which the Applicants now seek Variance relief) is just one other example of the Borough’s commitment to address / cure / remediate / minimize the extensive grading / drainage / flooding issues.
- xi. Recognition that in the recent past, the incidents of flooding and storm-related surges have happened with greater frequency.
- xii. Recognition that in the recent past, the incidents of flooding and storm-related surges seem to be spurred by, caused by, and / or otherwise aggravated by not just Hurricanes and Superstorms, but even by weather events involving high tides and moderate rainfalls.
- xiii. Recognition that in order to be most effective, the Borough’s flood mitigation efforts / actions need to be adopted, honored, maintained, and enforced.
- xiv. Recognition that granting Variance relief so that pools can be impermissibly installed / constructed in the seasonal high-water table would not advance the overall interests of the Borough of Sea Girt.
- xv. Recognition that granting Variance relief so that pools can be installed / constructed in the seasonal high-water table would not promote the overall interests of the Borough of Sea Girt.
- xvi. Recognition that granting Variance relief so that pools can be impermissibly installed / constructed in the seasonal high water does not promote the interests of the public or the homeowners.
- xvii. Recognition that granting Variance relief so that pools can be impermissibly installed / constructed in the seasonal high-water table

directly contradicts the Borough's recent flood mitigation efforts.

- xviii. Recognition that violation of the subject water table Ordinance might not prove devastating or damaging today, or tomorrow, and/or in one month, but rather, the damage, on a cumulative basis, might be observed in years / decades to come.
- xix. Recognition that granting the Variance relief as requested hereunder could compromise, perhaps fatally, the Borough's recent flood mitigation efforts / actions.
- xx. Recognition that the Borough has an interest in approving Applications which comply with flood-mitigation efforts – and that, for obvious reasons, the within Application does not so comply.
- xxi. Recognition that flood mitigation efforts / actions need to be developed / cultivated / implemented / maintained / honored – and approving Development Applications which are inconsistent therewith will be problematic for the Borough of Sea Girt, and the residents thereof.
- xxii. Recognition that the Borough of Sea Girt has a severe problem regarding storm management-related, flooding-related, and drainage-related issues – and approval of the within Application will only aggravate the same.
- xxiii. Recognition that there is a recognized public policy in furthering appropriate flood mitigation efforts – and that granting the Variance relief requested herein would weaken / compromise the Borough's flood-mitigation efforts.
- xxiv. Recognition that all new pools to be installed in the Borough will need to comply with the subject Zoning Regulation.
- xxv. Recognition that while pools which have already been constructed / installed are obviously exempt from the recently new

Regulation, all new pools will be subject to the same.

- xxvi. Recognition that approving Variance relief in the said regard could potentially create a negative precedent.
- xxvii. Recognition that under the Prevailing circumstances, it would be difficult to distinguish legally compelling reasons why the subject Variance can be granted in the within specific situation, but not in other similar circumstances.
- xxviii. Recognition that approval of the within Application, and approval of a pool being impermissibly located in the seasonal high-water table, violates the spirit and interest of the Borough's recent efforts in adopting the subject Ordinance.
- xxix. Recognition that that Applicants had other sufficient / realistic / practical options for developing the site without having to violate the Borough's seasonal high ground water elevation Ordinance.
- xxx. Recognition that while the Applicants' representatives provided testimony in support of the Application, the Board's professionals provided competing / inconsistent/ non-corroborating testimony in the said regard.
- xxxi. Recognition that approving an Application with the hope that the same will not have a detrimental impact on the community is not a sound, or productive, or reliable way for the Sea Girt Planning Board to operate.
- xxxii. Recognition that when faced with competing testimony / opinions, New Jersey Case Law allows Land Use Board Members to accept all or a portion of the testimony submitted and, correspondingly, reject all or a portion of the testimony presented.

- xxxiii. Recognition that under the circumstances, and with all due respect, for the reasons set forth herein, a majority of the Board respectfully rejects the testimony presented by the Applicant's professional representatives relative to the requested seasonal high-water table relief.
- xxxiv. Recognition that the Applicants' representatives failed to provide clear, convincing, and / or demonstrative evidence that the non-compliant pool, as proposed, could be installed without causing substantial detriment to the public good.
- xxxv. Recognition that other development options could be engaged so as to eliminate and / or otherwise minimize the extent of the Applicants' non-compliance with the Prevailing Zoning Ordinance.
- xxxvi. Recognition of the subject property is not too irregular so as to justify the seasonable high-water table relief requested herein.
- xxxvii. Recognition that an approximate 230 SF impermissible encroachment into the Borough's seasonal high-water table (as proposed herein) is significant, material and problematic.
- xxxviii. Recognition that the devastating impact of flooding associated with Hurricane / Super-Storm Sandy, and other similar storms, are still too vivid, and too fresh to allow for the total disregard of the Borough's Prevailing Seasonal High-Water Table Ordinance.
- xxxix. Recognition that the Applicants' arguments that the subject pool will only be in use approximately 4 months per year does not sufficiently address / assuage the Board's grading / drainage / flooding concerns.
- xl. Recognition that in the within situation, the Applicants did not sufficiently demonstrate that the site would or could accommodate the

problems associated with the pool impermissibly encroaching into the seasonal high-water table.

- xli. Recognition that approval of the within Application does not represent a better overall alternative for the Borough of Sea Girt.
- xlii. Recognition that the Applicants did not provide sufficient testimony, from a planning perspective, as to how the approval of the Application would affect the surrounding neighborhood or the Borough of Sea Girt – and, in the absence of the same, majority of the Zoning Board Members were not inclined to support the Application.
- xliii. Recognition that per the testimony / evidence presented, the Applicants’ proposal is not fundamentally sound from a planning perspective.
- xliv. Recognition that 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 Variance must always be the exception rather than the rule. In the within matter, the Applicants did not provide sufficient testimony justifying the grant of the requested relief.
- xlv. Recognition that under New Jersey Law, it is the Applicants’ burden to demonstrate sufficient reasons justifying the variance relief - and in the within case, the Applicants have failed to meet their burden.
- xlvi. Recognition that the Applicants are not entitled to have their property utilized for the most profitable/enjoyable use.
- xlvii. Recognition that the development site does not contain exceptional topographic conditions or physical features which would warrant granting the relief requested herein.

- xlvi. Recognition that there are no extraordinary or exceptional situations uniquely affecting the development site which would warrant the extreme seasonal high-water relief requested herein.
- xlvii. Recognition that the Applicants did not prove that the purposes of the Municipal Land Use Law would be advanced by approving the within application; rather, the within Application specifically detracts from the purposes of the Municipal Land Use Law in that such development would not promote the general welfare, would not provide protection from flooding, and would not provide a desirable visual environment through creative development techniques.
 - i. Recognition that some members of the Board were of the opinion that approval of the subject Application would have a significant and detrimental impact on the adjoining properties and the Borough of Sea Girt as a whole.
 - ii. Recognition that one purpose of the Municipal Land Use Law is to approve Applications which help secure the public from flooding – and that approval of the within Application will not advance such a goal. Rather, a majority of the Board finds that based upon the facts and circumstances of the within case, approval of the within Application would contribute to and/or aggravate flooding related problems for the Borough of Sea Girt.
- In balancing all of the above factors, and for the other factors set forth during the Public Hearing process, a majority of the Board has determined that the detriments associated with the subject portion of the Application out-weigh the benefits associated therewith.
- For the foregoing reasons, the within portion of the Application (Seasonal High-Water Table/Pool Elevation (for the water table referenced in the Plan)) has been **denied**.

MOTION TO APPROVE THE SUBJECT PORTION OF THE APPLICATION (POOL ELEVATION) WAS MADE BY MRS. BRISBEN AND SECONDED BY MR. BENSON.

THOSE INDIVIDUALS WHO VOTED TO APPROVE THE SUBJECT PORTION OF THE APPLICATION WERE AS FOLLOWS:

Larry Benson, Karen Brisben, Norman Hall

THOSE INDIVIDUALS WHO VOTED AGAINST APPROVING THE POOL ELEVATION ASPECT OF THE APPLICATION WERE AS FOLLOWS:

Carla Abrahamson, Jake Casey, Mayor Ken Farrell, Councilwoman Anne Morris, Ray Petronko, John Ward

AS A RESULT OF THE AFORESAID VOTE (WHEREBY "DENIALS" OUTNUMBERED "APPROVALS", THE SAID PORTION OF THE APPLICATION (POOL ELEVATION) HAS BEEN **DENIED**.

THE FOREGOING RESOLUTION (POOL ELEVATION PORTION DENIAL) WAS OFFERED BY MAYOR FARRELL, SECONDED BY COUNCILWOMAN MORRIS AND THEN BY THE FOLLOWING ROLL CALL VOTE:

Ayes: Carla Abrahamson, Jake Casey, Mayor Ken Farrell, Councilwoman Anne Morris, Ray Petronko, John Ward

Noes: None

Not Eligible to Vote: Larry Benson, Karen Brisben, Robert Walker, Norman Hall

CONDITIONS

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

- u. The Applicants shall comply with all promises, commitments, and representations made at or during the Public Hearing Process.
- v. The Applicants shall comply with the terms and conditions of the October 6, 2016 Review Memorandum of Leon S. Avakian, Inc. (revised February 8, 2017) (A-6) and the supplemental Leon S. Avakian Review Memorandum dated June 21, 2017 (A-7).

- w. The Applicants shall comply with all applicable / required Affordable Housing Regulations / Contributions / Directives as required by the State of New Jersey, the Council on Affordable Housing, the Borough of Sea Girt, the Court System, and any other agency having jurisdiction over the matter.
- x. The Applicants shall be required to submit any necessary / applicable bonds.
- y. The Applicants shall utilize good faith efforts to preserve as many trees on the site as possible.
- z. The Applicants shall perpetually maintain / replace the landscaping/fencing at the site so as to shield / screen the pool / patio from the street / public.
- aa. The Applicants shall obtain any and all necessary permits for the new curb cut.
- bb. The Applicants shall regularly maintain any installed drywells in accordance with prevailing design / manufacturing / industry standards / guidelines.
- cc. Upon installation of the pool, the Applicants shall provide the Board Secretary and Board Engineer with confirmation (subject to the review and approval of the Board Engineer) that the pool has been built / constructed / installed properly (i.e. in accordance with industry standards, manufacturing guidelines, prevailing municipal regulations, prevailing UCC regulations, and in compliance with the terms set forth herein).
- dd. The Applicants shall be required to submit 5 sets of revised Plans, incorporating all of the necessary modifications / amendments as set forth herein.
- ee. The Applicants shall cause the Plans to be revised and modified so as to portray and confirm the following:
 - The inclusion of 3 drywells at the site (capturing 510 cubic feet of water) (the details of which shall be reviewed and approved by the Board Engineer).

- A note confirming that there will be additional landscaping planted along the Sea Girt Avenue portion of the site.
- A note confirming that there will be Code-Compliant fencing placed around the pool.
- A note confirming that the currently existing curb-cut shall be eliminated.
- A note confirming that the pool equipment will be located in a zoning compliant location.
- Confirmation that a drywell will be installed in the crawl space.
- Confirmation that per the Leon S. Avakian, Inc., Review Memorandum, that a back-flow preventer shall be provided.
- A note confirming that the pool lighting shall comply with prevailing code / ordinance requirements.
- Confirmation that there will be a new location for the drywells, so that the same are a minimum of 5 feet off the property line, between the proposed pool and the house (the details of which shall be reviewed and approved by the Board Engineer.)
- A note confirming that the pool will not require back-washing.
- The construction equipment shall not be placed / maintained in the area of any drywells.

The parties acknowledged that if the pool is not constructed, then, in that event, the pool patio will also not be constructed. Moreover, the Board acknowledges that in the event the pool is not installed / constructed, the Board acknowledges that there should be no requirement to install any drywells. If, however, the pool is

installed/constructed, the Applicants shall be required to install a number of drywells as required by the Prevailing Borough Ordinance / Regulation, all of which shall be satisfactory to the Board Engineer.

- ff. The Applicants shall submit a Grading Plan / Drainage Plan / Stormwater Management Plan, which shall be approved by the Board Engineer. (The Applicants shall also install a supplemental drywell / drywell, if deemed necessary by the Board Engineer.)
- gg. The Applicants shall manage storm-water run-off during and after construction (in addition to any other prevailing / applicable requirements / obligations.)
- hh. The Applicants 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
- ii. 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.
- jj. The construction, if any, 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.
- kk. The Applicants 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.
- ll. The Applicants 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.

- mm. The Applicants shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.
- nn. If required by the Board / Borough Engineer, the Applicants shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.
- oo. Unless otherwise agreed by the Planning Board, the approval shall be deemed abandoned, unless, within 24 months from adoption of the within Resolution, the Applicants obtain a Certificate of Occupancy (if necessary) for the construction / development approved herein.

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 the proposed improvement, or for any damage which may be caused by the development / installation.

The last item under Old Business was the consideration of approval of a Resolution for Variance Relief for Block 75, Lot 8, 514 Philadelphia Boulevard, owned by John & Annabelle Flynn, to allow a covered front porch.

As all Board members had received a draft copy and there were no changes or recommendations, the following was presented for approval:

WHEREAS, Annabelle S. Flynn has made Application to the Sea Girt Planning Board for the property designated as Block 73, Lot 8, commonly known as 514 Philadelphia Boulevard, Sea Girt, New Jersey, within the Borough's District 1, East Single-Family Zone, for the following approval: Bulk Variances associated with an Application to construct a front-covered porch over an existing stoop; and

PUBLIC HEARING

WHEREAS, the Board held a Public Hearing on August 16, 2017, 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:

- *Land Development Application, dated June 6, 2017, introduced into Evidence as A-1;*
- *Zoning Officer Denial Letter, dated May 12, 2017, introduced into Evidence as A-2;*

- *Architectural Plans, prepared by Brian M. Collis, dated April 25, 2017, consisting of 2 sheets, introduced into Evidence as A-3;*
- *Survey, prepared by Charles O'Malley, PLS, dated June 19, 2017, consisting of 1 sheet, introduced into Evidence as A-4;*
- *Leon S. Avakian Inc., Review Memorandum, dated August 8, 2017, introduced into Evidence as A-5;*
- *Affidavit of Service; and*
- *Affidavit of Publication.*

WITNESSES

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

- Annabelle S. Flynn, Applicant, Appearing Pro Se

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 has owned the subject property for approximately 40 years.
- There is an existing single-family home at the site. (The site also contains a detached garage as well.)
- The Applicant lives at the home/site.

- In order to make the existing home more functional, the Applicant proposes to construct a new front-covered porch over the existing stoop.
- The proposed porch will simply involve a covering over the existing stoop.
- The proposed porch will architecturally / aesthetically complement the existing structure.
- The height of the home will not change as a result of the within Application.
- The Applicant will be utilizing licensed Contractors in connection with the renovation process.
- The Applicant anticipates commencing the construction process as soon as possible.

VARIANCES

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

BUILDING COVERAGE: Maximum 20% allowed; whereas 20.62% proposed.

FRONT YARD SETBACK: 40 feet required; whereas 36.5 feet proposed.

PUBLIC COMMENTS

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

- None

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:

11. The Sea Girt Planning Board has proper jurisdiction to hear the within matter.

12. The subject property is located at 514 Philadelphia Boulevard, Sea Girt, New Jersey, within the Borough's District 1, East Single Family Zone.

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

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

15. In order to improve the functionality of the existing home, the Applicant proposes to construct a new front-covered porch over an existing stoop.

16. Such a proposal requires Bulk Variance approval.

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

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

- Currently, there is an existing front stoop at the site, which is not covered. The lack of a covering over the existing stoop exposes the owner, and guests, to adverse weather elements, such as extreme heat, snow, ice, rain, etc.

- The installation of a covering over the existing stoop will shield the owner and guests from the aforesaid adverse weather elements.
- Shielding the owner and guests from potentially adverse weather elements will promote the health and safety for those individuals at the site.
- The testimony indicated that the lack of a covering over the existing stoop has repeatedly compromised the structural integrity of the Applicant's front doors over the years. The front-covered porch (over the existing stoop) approved herein should likely minimize the adverse effects of direct sunlight on the Applicant's front door(s).
- As indicated, the within Application only involves the installation of a front-covering over the existing stoop. As such, approval of the within Application will not change the ground-level footprint of the existing structure.
- Approval of the within Application will not increase the size of the home.
- Approval of the within Application will not increase the amount of living space associated with the site.
- The Board is also aware that under the terms of the existing Ordinances, the existing front stoop does not necessarily count as lot coverage. However, the Board is also aware that per the terms of the Borough Ordinance, installation of the covering over the existing stoop will count as lot coverage, thereby causing the need for the technical variance for coverage.
- The absence of a front porch at the home detracts from the overall aesthetic appeal of the existing structure.
- The proposed front porch is not oversized or otherwise overwhelming.
- If the size of the front-covered porch were to be reduced, the same could compromise the overall functionality / aesthetic appeal of the same.
- With regard to the Building Coverage Variance, the Board notes the following calculations:

Maximum allowed	20%
Proposed	20.62%

Under the circumstances, the 0.62 deviation in building coverage is de minimis.

- The subject site can physically accommodate the front covered porch approved herein.
- The Application as presented also requires a variance for the front setback (40 feet required; whereas 36.5 feet proposed to the covered porch). However, the Board acknowledges that the existing stoop already exists, and that approval of the within Application will not change or re-orient the existing setback.
- The front setback of the porch approved herein is generally consistent with the front setbacks of other porches in the area.
- Approval of the within Application will not compromise or otherwise detrimentally impact any views at and/or around the site.
- The Applicant's porch plans are reasonable under the circumstances and reasonable per the size of the existing Lot.
- Approval of the within Application will not increase the overall height of the existing structure.
- The Applicant's site / lot can physically accommodate the porch 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 porch is practical and appropriate.
- Subject to the conditions contained herein, the front-covered porch approved herein will not over-power / over-whelm the subject Lot.

- Upon completion, the renovation approved herein will not overpower / 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.
- Sufficiently detailed testimony / plans were presented to the Board.
- The proposed new porch should nicely complement the property and the neighborhood.
- 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 proposed new front-covered porch approved herein will not be inconsistent with the architectural character of other single-family homes/improvements 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 owners and, thus, the Application can be granted without causing substantial detriment to the public good.
- The improvement to be renovated herein will not be inconsistent with other 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, the Board is of the unanimous 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 August 8, 2017 (A-5).
- c. The Applicant's representatives shall confirm the exact Lot Coverage / Building Coverage and Riser Height (in accordance with Borough Requirements).
- d. The Applicant shall repair the front sidewalk so as to improve overall safety at the site.
- e. The Applicant shall submit 5 sets of revised / sealed plans (with riser height) to the Board Secretary, for the ultimate review and approval of the Board Engineer.
- f. The Applicant shall comply with all Prevailing Building / Construction Code Requirements.
- 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 structure 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, if any, 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.

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 misrepresentations 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.

Wednesday, October 18, 2017

FOR THE APPLICATION: Carla Abrahamson, Larry Benson, Karen Brisben, Jake Casey, Mayor Ken Farrell, Eileen Laszlo, Councilman Anne Morris, Ray Petronko, Norman Hall

AGAINST THE APPLICATION: None

NOT ELIGIBLE TO VOTE: Robert Walker, John Ward

The above Resolution was approved on a motion by Mrs. Laszlo, seconded Mayor Farrell and then by the following roll call vote:

Ayes: Carla Abrahamson, Larry Benson, Karen Brisben, Jake Casey, Mayor Ken Farrell, Eileen Laszlo, Councilman Anne Morris, Ray Petronko, Norman Hall

Noes: None

Not Eligible to Vote: Robert Walker, John Ward

NEW BUSINESS:

The Board then turned to an application for Site Plan approval for Block 77, Lot 5, 526-528 Washington Boulevard, owned by JTAS Realty, LLC, to allow reconstruction and add onto the existing structure to create a 2 ½ story building, dental office on first floor and dwelling unit above. Side Yard Setback- 6 feet required, 3.8 feet (east & west) existing & proposed. Minimum Parking Space Width – 10 feet required, 9 feet existing & proposed. Minimum Parking Space length – 20 feet required, 18 feet existing & proposed. Waivers – requesting waivers for Environmental Impact Report, Lighting & Landscaping, Drainage Calculation.

The correct fees were paid, taxes are paid to date and the property owners within 200 feet as well as the newspaper were properly notified. Mr. Kevin Callahan, Esq. came forward to present this application. Let it be on the record that John Ward recused himself from this hearing as he lives within 200 feet of the property. Before starting, Mr. Kennedy explained to all that this hearing was set for last month but, due to the school not being able to have the Board meet, it was carried to this month with no further notice; however, Mr. Callahan did re-notice, through regular mail, that the meeting was rescheduled.

The following were marked as Exhibits:

A-1. The application checklist

A-2. The application

A-3. Letter from Board Engineer dated 5/18/17.

A-4. Zoning Officer Letter of Denial

A-5. Site Plan dated 8/24/17

- A-6. Soil Erosion plan
- A-7. Survey dated 1/19/17
- A-8. Architectural plans dated 8/23/17
- A-9. Letter from Board Engineer dated 9/6/17

At this time Mr. Peter Avakian, Board Engineer, was sworn in. Kevin Callahan then told the Board that the application is for JTAS Realty, LLC and the principals are Patrick and Jamie Marie Cuozzo. The Board members were asked if they would have any conflict with this LLC and there were no conflicts. Mr. Callahan explained that Dr. Patrick Cuozzo has a practice in Sea Girt, this has been there on Washington Boulevard since 1972 when his father, Gary Cuozzo, started here. Patrick Cuozzo now owns the business and has bought the bank building at 526-528-Washington Boulevard. The building itself will conform on the east side and will be designed to get more parking.

At this time Mr. Brian Berzinskis, Architect, came forward and was sworn in, along with Joseph Kociuba, Engineer & Planner and Dr. Patrick Cuozzo, the applicant and member of the LLC. Dr. Cuozzo started his testimony and told the Board he joined his father's dentistry practice in 1997 and things have changed since then; they started out being opened one day a month and now are open 2 days a week and see 80-100 patients a day. They currently have 4 parking spots, 2 for the apartment on the second floor and 2 for the business at 528 Washington Boulevard where they now are. They have 10 employees who use public parking. They plan to eliminate the drive-up window at the bank building which will give them more parking.

Mr. Callahan asked Dr. Cuozzo about the size of the parking spaces, they are 9x18 feet and are required to be 10x20 feet. Dr. Cuozzo said he would like to keep them as 9x18 feet. He also said the building was designed by the architect and they have a dental designer for the offices inside, they are still working on that. Mr. Callahan asked about the present location for trash and Dr. Cuozzo said they have 3 cans, sharps are picked up by a separate company; they are completely digital and there is very little waste & recycling. Mr. Callahan noted the trash receptacle area is not shown on the plans and Dr. Cuozzo said 3 cans will be by the fencing, similar to apartments down the street. If this area is not approved, they would have to extend forward up to 15 feet and they prefer not to do that, if they extend into the parking they would lose 4 spaces.

Mr. Callahan then asked about signage and Dr. Cuozzo wanted a free standing sign that is illuminated, along with a sign on Sea Girt Avenue that will show the entrance for Cuozzo Orthodontics. The intent here is to have the same parking, lighting and landscaping, their hours are from 7 am and they leave by 8 pm and can turn off the lighting at 8 pm. Mr. Petronko asked Mr. Avakian about the parking space size and Mr. Avakian said the RSIS requirements pertain to residential parking as far as 9x18 feet.

This is in a Commercial Zone so the Sea Girt Ordinance needs to be followed, they are asking for variance relief for this.

Mr. Casey asked what days they are open and was told Monday and Wednesday, they do not plan on more but, if needed, they will do more days. Mayor Farrell asked if the whole building is being demolished and Dr. Cuozzo said the Architect can address this. Mr. Benson asked about Saturday hours and Dr. Cuozzo said no, not now, he did not want to have to work on Saturday. Mr. Petronko questioned the statement made that lights will be turned off at 8 pm and did they want to do that to the second floor tenants? Dr. Cuozzo said there is a light there and may be a town light, Mr. Petronko said all poles have serial numbers and they can find out.

At this time the hearing was opened to the public for questions to Dr. Cuozzo and, hearing none, that portion was closed and Brian Berzinskis, Architect, came forward to testify. As the Board was familiar with him he was accepted as an expert witness. He presented Exhibit A-10, an illustrated rendering of the proposed building prepared by himself; this is what the building will look like. Mr. Callahan asked him how it is designed and Mr. Berzinskis said he did a layout on the first floor based on the envelope of the building and there will be a second floor apartment; there is also a walk-up area to a half story. They are keeping the line of the front and are removing the overhead canopy and will bring the building a little more out; there will be a small addition where the air conditioning units will be. The half story will not exceed the second story, it comes in under 50%. There is a change in height of the first floor but the building height will conform and will be explained by the Planner. Mr. Callahan asked if the signage will conform and was told it will. This was marked as Exhibit A-11 1 sheet prepared by Mr. Berzinskis and done today.

Mr. Berzinskis went on to say the building will have a brick veneer and the roof lines will be metal and shingle; the building will be handicapped accessible. Mr. Petronko asked how to expect the patients to know where to park, in the front or rear as the entrance is on the side and will there be a sidewalk? Mr. Callahan said there will be a walkway with no steps. Mayor Farrell asked if this is all new construction and Mr. Berzinskis said no, the interior will be new, they are changing the sidewall in the front and it will be done to the back. Mayor Farrell asked if they did calculations on the building area and Mr. Berzinskis said yes. Mayor Farrell said he asked this as 3,659 square feet is the maximum now and the town now uses setbacks for this, they have run into issues in the Commercial District for lot coverage so they passed an Ordinance for setbacks and coverage area, he just wanted to be sure this complies. Mr. Callahan said the Engineer/Planner can answer this and Mr. Kociuba came forward. As the Board was familiar with him he was accepted as an expert witness. He said the Ordinance is for the square footage of the interior and they are less coverage then the maximum, they are maybe using only 60% of what they could.

As there were no more questions from the Board the hearing was opened to the public for questions to Mr. Berzinskis and, as there were none, that portion was closed

and Mr. Joseph Kociuba came forward to officially testify. Mr. Benson did ask if, on the street side, will there be retail and Mr. Callahan answered and said no, it will all be the dental office. Mr. Kociuba then started his testimony saying the property has 12,797 square feet with a 50 foot frontage on Washington and a 56.4 foot frontage on Sea Girt Avenue, the surrounding area is all commercial with apartments upstairs.

The footprint of the building is 2,924.7 square feet, the first floor will be all for dental use and the second floor will have a 4 bedroom apartment. They need 7 parking spaces and have 13 there now. They will comply with the side yard setback by removing the existing canopy but they do need a variance for the 9x18 feet parking spaces. There is ample size here and this minimized the impervious coverage. There will be doors on the side and back and one handicapped entrance to the rear door. The loading here is UPS, etc. and there is no need for a loading zone. There will be a small fenced enclosure for trash with a 4 foot solid vinyl fence for 2-3 cans. The utilities are already there as well as the landscaping and the existing lighting will remain. The sidewalks exist and there will be a slight ramp for grade change. They are going to raise the floor up a little as the back of the building floods and water backs up in the parking lot. They are going to raise the floor 8 inches to allow no ponding water; they are also putting in a recharge system for additional protection; there will be no more impervious coverage added. The height of the building will comply at 34.32 feet and they are requesting signage of 25 square feet and illuminated, this will be in the front yard center. There also will be a professional sign of 2 square feet for an access sign in the rear to let motorists know about the rear parking lot. They do need a variance for the side yard setback, 6 feet is required and 3.8 is existing & proposed. They also need a variance for the parking space size.

He said that, under the C-1 and C-2 criteria variance these can be granted. They are not looking to move the building which has been there since 1960 and Mr. Kociuba said the benefits here outweigh any detriments. They also do not want to move the building as it lines up with the rest of the commercial establishments and it would not be aesthetically pleasing to move it forward, if they move to the rear they lose parking so they are asking to maintain the 3.8 side yard setback as that is better planning. The only expansion here is vertical and it will not be a traffic producer as well as having no impact on storm water. This project will not impair the Zone Plan or Zoning Ordinance and is a proper use in the Commercial Zone. They do have dual footage and may need another variance if the trash enclosure is considered an accessory structure. Mr. Benson asked about grading and was told the property drains towards the building and any runoff will be collected by the recharge system.

Mrs. Brisben commented that they will need to submit revised plans and Mr. Kociuba agreed, he will provide 5 revised plans showing the trash enclosure. Mr. Avakian commented that he had done some calculations of the building coverage and agreed it conforms to that and is below the maximum. He did ask Mr. Kociuba about a difference with his plan and the architect, it says 34.32 feet high and the architect plans

says 33.6 feet; Mr. Kociuba said the architect plan did not account for raising the floor. Mr. Avakian asked if they have checked to see if the parking is adequate and Mr. Kociuba said that was not a particular concern but they will take care of that if needed. Mr. Avakian went on to say there would be a waiver of the foot candle information and the existing landscaping and would there be any light shielding, the Board should know. Mr. Kociuba said there is a substantial existing 6-foot vinyl fence along with arborvitaes here and the parking lot has been there for 60 years. Mr. Avakian noted the Ordinance says that mechanical equipment has to be in the rear or on the roof and Mr. Kociuba said it will be in the rear and it is shown on the plans, it's not really the rear as this lot fronts on two streets but they felt this was the most appropriate location. Mr. Avakian reminded him they do front on a County road and they need to submit the plans to them for their approval. Mr. Avakian then asked if they can provide a recharge calculation and Mr. Kociuba said yes and he will get that to him.

Mr. Kennedy asked if the apartment is going to be rented and Mr. Callahan said that right now the owner will be using it but they may rent it out in the future. He said he is a neighbor to this property and they share the lighting, parking is the key factor and Dr. Cuozzo will make efficient and good use here, he asked the Board to approve this site plan.

The hearing was now opened to the audience for questions to Mr. Kociuba and, as there were none, that portion was closed and the hearing was opened for general comments. Marilyn Stack from Diane Turton Agency came forward and was sworn in. she said it will be a real pleasure to see this, there is always a parking problem. As there were no more comments that portion of the hearing was closed and the Board went into discussion. Mrs. Brisben felt it was a good presentation and she was glad to see Dr. Cuozzo staying in town, Mrs. Laszlo and Mrs. Abrahamson agreed. Mr. Casey said he will miss the cut through to Rod's across the street and commented if the total building is taken down they can then comply. Councilwoman Morris was thrilled to see Dr. Cuozzo staying and making the building more attractive, she was for approval. Mayor Farrell agreed with what was said and commented on three items: 1) getting rid of the canopy and making the area safer, 2) putting in a recharge system is a smart move and 3) the lot coverage being at 22.07%. He echoed Mr. Casey's thought and was also glad to see them staying in town. Mr. Benson thought it was a positive application and had nice designing, the parking is adequate. Mr. Petronko felt it was a great proposed use, Mr. Walker and Chairman Hall agreed with what was said and were for approval.

At this time a motion was made by Mrs. Laszlo to approve the application, as presented, this seconded by Mayor Farrell and then by the following roll call vote:

Ayes: Carla Abrahamson, Larry Benson, Karen Brisben, Mayor Ken Farrell, Eileen Laszlo, Councilwoman Anne Morris, Ray Petronko, Norman Hall

Noes: Jake Casey

Not Eligible to Vote: Robert Walker

Mr. Kennedy then went over the Resolution and conditions and told the Board that as this was not heard in September, there would be a Resolution of approval granted this evening and he outlined the contents of the Resolution. The following Resolution was then submitted:

WHEREAS, Representatives of JTAS Realty, LLC have made Application to the Sea Girt Planning Board for the property designated as Block 77, Lot 5, commonly known as 526-528 Washington Boulevard, Sea Girt, New Jersey, within the Borough's District 2, East Convenience Commercial Zone, for the following approval: Site Plan Approval, Bulk Variance Approval, and Design Waiver Approval to effectuate the following:

- Conversion of an existing 1 story Bank Building to a 2 ½ story mixed use professional office (dental office) with residential apartment above;
- Construction of several additions to the existing building;
- Re-striping of existing parking spaces;
- Elimination of an existing driveway;
- Installation of other customary site improvements; and

PUBLIC HEARING

WHEREAS, the Board held a Public Hearing on October 18, 2017, Applicant's Representatives 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 / Land Development Application Package, dated July 5, 2017, introduced into Evidence as A-1;*

Land Development Application Completeness Checklist, introduced into evidence as A-2;

- *Communication from the Applicant's Engineer/Planner, to the Board Secretary, dated May 18, 2017, introduced into Evidence as A-3;*
- *Zoning Officer Denial Letter, dated March 14, 2017, introduced into Evidence as A-4;*
- *Site Plans, prepared by KBA Engineering Services, LLC, dated May 17, 2017, last revised August 24, 2017, consisting of 4 sheets, introduced into Evidence as A-5;*
- *Soil Erosion and Sediment Control Plan, prepared by KBA Engineering Services, LLC, dated May 17, 2017, consisting of 2 sheets, introduced into Evidence as A-6;*

Topographical Survey, prepared by Seneca Survey Co., Inc., dated October 31, 2016, last revised January 19, 2017, introduced into evidence as A-7;

- *Architectural Plan, prepared by Grasso Design Group, dated June 23, 2017, last revised August 23, 2017, consisting of 1 sheet, introduced into evidence as A-8;*
- *Review Memorandum from Leon S. Avakian, Inc. dated September 6, 2017, introduced into evidence as A-9;*

Illustrated rendering of the proposed building, prepared by Brian Berzinskis, Architect, dated October 18, 2017, introduced into evidence as A-10.

Signage Elevation, prepared by Brian Berzinskis, Architect, dated October 18, 2017, consisting of 1 sheet, introduced into evidence as A-11.

- *Affidavit of Service; and*
- *Affidavit of Publication.*

WITNESSES

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

- Brian Berzinskis, Architect;
- Joseph J. Kociuba, P.E., P.P., Engineer/Planner
- Dr. Patrick Cuozzo, Managing Member;
- G. Kevin Callahan, Esq. appearing;

Whereas Peter Avakian, the Board Engineer/Planner was also sworn with regard to any testimony/information he would provide in connection with the subject Application.

TESTIMONY AND OTHER EVIDENCE PRESENTED ON BEHALF OF THE APPLICANT

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

- The Applicant is the owner of the subject property.
- Dr. Cuozzo is the Managing Member of the Applicant LLC.
- Dr. Cuozzo has an existing dental practice, and has provided dental services in the area since approximately 1972.

- There is an existing building at the site, which is currently vacant. The said building previously hosted a bank use.
- Dr. Cuozzo is proposing to relocate his dental practice to the subject site.
- In conjunction with such a relocation, the Applicant is proposing several additions and renovations to the existing building.
- The Applicant proposes to utilize the building as follows:

First Floor: Dental office use

Second Floor: Residential apartment use

- The details pertaining to the proposed dental office use include the following:

Number of Employees 10

Average number of patients seen per day 80 to 100

Hours of Operation standard hours (morning to 7:00 pm), with the doctor and staff members leaving the facility by 8:00 p.m.

Days of week the proposed office will open Mondays and Wednesdays, but the said schedule will increase, if there is a need

- As indicated, the top floor and half floor of the building will contain one residential apartment use.
- The proposed apartment will include the following:

Second Floor

Master Bedroom

Master Bathroom

Bedroom

Bedroom

Bathroom

Bathroom

Great Room

Kitchen

Office / Bedroom

Den

Balcony

Deck

Top Half Story

Loft area

- The proposed materials include the following:

Brick Veneer

Gray Shakes

Asphalt shingle porch

Other details, per the plans

VARIANCES

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

SIDEYARD SET BACK (WEST SIDE): 6 ft. required; whereas 3.8 ft. proposed.

PARKING SPACE WIDTH: Minimum 10 ft. required; whereas 9 exists and 9 ft. proposed;

PARKING SPACE LENGTH: 20 ft. required; whereas 18 ft. exists and 18 ft. proposed;

ACCESSORY STRUCTURE LOCATION: Per the prevailing Borough zoning regulations, a trash enclosure (potential accessory structure) is not to be located in a front yard area; whereas, in the within situation, the Applicant proposes such a front yard location for the trash area;

PUBLIC COMMENTS

WHEREAS, the following members of the public expressed questions, comments, statements, and / or concerns in connection with the Application:

- Marilyn Stack.

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 526-528 Washington Boulevard, Sea Girt, New Jersey, within the Borough's District 2, East Convenience Commercial Zone.

3. There is an existing 1 story Bank Building at the site (with drive-up window).

4. The Applicant's representatives propose to effectuate the following:

- Conversion of an existing 1 story Bank Building to a 2 ½ story mixed use professional office (dental office) with residential apartment above;
- Construction of several additions to the existing building;
- Re-striping of existing parking spaces;
- Elimination of an existing driveway; and
- Installation of other customary site improvements.

5. Such a proposal requires Site Plan Approval, Bulk Variance approval, and Design Waiver approval.

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

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

- The proposed dental office with residential unit above is a permitted use in the subject District 2 East Convenience Commercial Zone.
- The Board recognizes that approval of the within Application will convert an existing 1 story bank building into a dental office (with residential unit above) (in conjunction with other various improvements.)

- Improvements associated with Application include the following:
 - a. Construction of an addition on the east side of the building;
 - b. Construction of an addition on the rear side of the building;
 - c. Construction of a top floor addition;
 - d. Re-striping of the parking lot;
 - e. Relocation of an existing driveway; and
 - f. Other customary site improvements.
- The proposed mixed-use will require 7 off-street parking spaces, calculated as follows:
 - Residential Apartment Use 2 spaces
 - Proposed Dental Office..... 5 spaces
(1 space for each 600 SF of
Gross floor area)
 - Total required parking spaces = 7 spaces
- The Applicant's representatives propose 13 off-street parking spaces, and thus, no parking variance is required.
- Sufficient/compliant parking is of critical importance to the Board – and but for the same, the within Application may not have been approved.
- Per prevailing ADA Regulations, the site will have at least one ADA parking space which be appropriately sized/located.
- Per the prevailing Borough Ordinance, parking spaces are required to measure 10 ft. wide by 20 ft. in length. Currently, the existing parking spaces at the site measure only 9 ft. by 18 ft., and the Applicant's representatives will be re-striping the same to the existing conditions. Under the circumstances, the Board has no objection to such a re-

striping plan. Consequently, the Board finds that the two (2) variances for parking space dimensions (Lot/Width) can be granted without causing substantial detriment to the public good.

- The Board is aware that per the testimony and evidence presented, there will be no tractor trailers at the site – but rather, only deliveries will be via standard UPS and federal express type vehicles, etc. Towards that end, the Board recognizes that the existing and to be continued non-compliant parking spaces will be sufficient for the Applicant’s proposed use.
- The Board recognizes that the existing parking lot at the site contains 9 X 18 parking spaces, which will be continued hereunder. In the event there were significant demolition and new construction associated with the within Application, the Board would likely not permit such a pre-existing non-conforming condition to continue. However, in the within situation, the Board finds that continuation of the pre-existing non-conforming parking space sizes will not be detrimental to the public good.
- The Applicant’s proposed building will be 2 ½ stories, which conforms with the Borough’s prevailing zoning regulations and, as such, no variance is necessary in the said regard.
- The Applicant’s proposed building will have a conforming height of 34.32 ft. (whereas 35 ft. is otherwise allowed in the zone). As such, no height variance is required.
- The Board notes the subject property is an oversized lot, containing 12,797 sq. ft., (whereas the minimum required lot size in the zone is only 7,500 sq. ft.)
- The Application as presented requires a variance for side yard setback on the west side of the property. The specific measurements in the said regard include the following:

Required side yard setback	6 ft.
Existing side yard setback	3.8 ft.
Proposed side yard setback	3.8 ft.

- The Board Members thoroughly analyzed the said situation as to why such a variance should be granted under the circumstances (particularly in that the subject lot is oversized).
- With respect to the above concern, the Board notes/observes/finds the following:
 - i. The existing non-conforming side setback of 3.8 ft. will remain.
 - ii. Approval of the within Application will not exacerbate the said pre-existing, non-conforming side yard condition.
 - iii. Other development options were considered (to avoid the need for a side yard setback), but the same were not found to be desirable, preferable, practical, or functional.
 - iv. If the 6-ft. west side setback were honored, the same would likely require, or otherwise result in building expansion to the rear or front, which would compromise the Applicant's consistency with other prevailing front yard setbacks and rear yard setbacks in the area.
 - v. Continuation of the pre-existing, non-conforming west side setback will not be out of character for the area.
 - vi. There were no public objections associated with the Application, or the requested variance relief. In fact, one member of the public encouraged the Board to approve the application.
 - vii. The non-conforming side yard setback (of only 3.8 ft.) will be extended (vertically) for the second floor. The Board acknowledges that if the second floor addition did not honor the same setback for the existing first floor portion of the structure, the renovated building would

appear to be architecturally/aesthetically compromised.

- viii. Per the testimony presented, the Board acknowledges that a compliant side yard setback at the site would likely require, or otherwise invite, a building expansion towards the rear or the front of the site, which could further compromise the existing streetscape.
 - ix. Continuation of the non-conforming side yard setback will allow the Applicant to preserve/maintain the existing streetscape and fabric of the neighborhood.
 - x. After analyzing the above factors, and the other items discussed during the Public Hearing process, the Board finds that the benefits of granting the variance relief outweigh any potential detriments associated therewith.
- The Board notes that there is an existing canopy at the site which is non-compliant. The Board is further aware that approval of the within Application will result in the elimination of the said non-conforming canopy.
 - The Application as presented requires a waiver for submission of drainage calculations. In that the within Application does not qualify as major development, the Board finds the said waiver can be granted without causing substantial detriment to the public good.
 - The Board also notes that approval of the within Application will not result in the disturbance of any environmentally sensitive areas.
 - The Application as presented requires a waiver for lighting and landscaping submissions. In that lighting and landscaping already exist at the site, and in that the Applicant's representatives are not proposing any lighting/landscaping improvements, the Board finds the said waiver can be granted without causing any substantial detriment to the public good.
 - The Application as presented requires a waiver for submission of drainage calculations. In that the within

Application does not qualify as a major development, the Board finds the said waiver can be granted without causing substantial detriment to the public good.

- As a condition of the within approval, unless waived, the Applicant's representatives will be submitting grading/drainage details to the Board Engineer for his review and approval – further evidencing that the requested submission waiver can be granted without causing substantial detriment to the public good.
- As part of the within application, the Applicant proposes an underground recharge field – which will be beneficial to the site, the neighborhood, and the Borough of Sea Girt as a whole.
- Sufficiently detailed plans were submitted to the Board.
- The site is an appropriate host site for the proposed professional/dental office (with residential apartment above).
- Per the testimony presented, Dr. Cuozzo intends to potentially occupy the residential apartment over the proposed dental office. In a general sense, the Board recognizes the many benefits associated with owner-occupied properties.
- As part of the within application, the existing driveway off of Washington Boulevard will be eliminated, thereby likely providing the Borough of Sea Girt with an additional off-street parking space available for public use.
- Per the testimony and evidence provided, the elimination of the existing driveway should help improve/promote public safety.
- Given the nature of the within Application, the Board recognizes that, essentially, the building additions will be created on top of a building which already exists, (i.e. and on top of the land which has already been disturbed.)
- The Board is aware that one of the main purposes of the Borough's District 2, East Convenience Commercial Zone is to preserve the existing primary area of commercial concentration in town – and the Board finds that approval of the within Application will help effectuate such a goal.

- The Board notes that per the testimony and evidence presented, the dental office use is not an intense traffic generator.
- The Board is aware that the existing building is vacant, but nonetheless located on a major thoroughfare within the Borough of Sea Girt. Towards that end, the Board recognizes potential issues associated with a vacant storefront on one of the main roads within the Borough's business corridor.
- The Board notes that the overall lot coverage is compliant, and is even under what is otherwise permitted.
- As part of the within Application, the Applicant's Representatives will be adding a recharge tank to the site, which will help improve overall storm-water management techniques. The said improvements will be beneficial for the site, the neighborhood, and the community as a whole.
- The within Application represents an adaptive reuse of an existing building, in a modern/functional way, which will not compromise the interest of the Borough of Sea Girt.
- Approval of the within Application represents a functional renovation of the existing structure.
- Subject to the conditions contained herein and subject to reasonable standards, there is a legitimate development goal associated with allowing an Applicant to appropriately operate a professional office at the site in a manner which can better address the reasonable demands/needs of area residents.
- As indicated, the within application will result in a number of ADA-compliant features – including an ADA ramp, bathroom, parking areas, etc.
- In conjunction with the above point, approval of the within application will significantly increase and improve handicapped accessibility at the site.
- Improved handicapped accessibility is a laudable goal – and the benefits of the within application far out-weigh any detriments associated therewith.

- The driveway relocation, as referenced, will improve the overall traffic situation at and around the site.
- The driveway relocation, as referenced, will improve the traffic circulation at and around the site.
- The driveway relocation, as referenced, will improve / advance public safety.
- The driveway relocation, as aforesaid, promotes a free flow of traffic in and around the site.
- Per the testimony and evidence presented, approval of the within Application will better channel motorists / pedestrians utilizing the parking area, thereby increasing overall motorist / pedestrian safety at the site.
- Given the very large size of the lot, approval of the within Application will not violate or otherwise compromise the traditional Zoning goals of air, space, and light.
- Subject to the conditions contained herein, use at the site as a professional office site (with residential apartment above) will not be out of character for the subject area.
- Making the site more ADA-compliant represents a sound and legitimate development goal.
- Making the site/structure more ADA-compliant facilitates appearance at the site by handicapped individuals, or other individuals whose mobility is challenged.
- There are many benefits with making the site more open/accommodating/inviting to handicapped individuals and/or others whose mobility is challenged.
- The Application as presented requires a potential variance for the location of the trash area in a technical front yard area. Towards that end, the Board recognizes that the subject lot is a through lot, with technical frontage on both Sea Girt Avenue and Washington Boulevard. Towards that end, the Board recognizes that the said geography compromises the ability of the Applicant to satisfy all of the prevailing bulk requirements (including the requirement for trash location.)

- Subject to the conditions contained herein, the subject Application satisfies all storm-water / recharge requirements.
- Subject to the conditions contained herein, the expanded building approved herein will properly manage storm water run-off at the site.
- Per the testimony and evidence presented, approval of the within Application will help an existing area professional remain operational and competitive, without causing a substantial detriment to the surrounding community.
- Subject to the conditions set forth herein, and per the testimony and evidence presented, there are no known grading / drainage issues associated with the proposed expansion/renovation.
- Subject to the conditions contained herein, the benefits of the within Application out-weigh any detriments associated therewith.
- 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.
- Approval of the within Application will have no known detrimental impact on adjoining properties and thus, the Application can be granted without causing substantial detriment to the public good.
- Professional Office Use at the site (with residential apartment use above), as approved herein, will not be out of character for the area.
- Subject to the conditions set forth herein, and in conjunction with any necessary Design Waivers, the Application satisfies the Site Plan Requirements of the Borough of Sea Girt.
- Subject to the conditions contained herein, the Application as presented will have a minimal impact on the surrounding neighborhood.

Based upon the above, and for the other reasons set forth herein, and during the Public Hearing process, the Board is of the unanimous 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's Representatives agreed, to comply with the following conditions:

- pp. The Applicant shall comply with all promises, commitments, and representations made at or during the Public Hearing Process.
- qq. The Applicant shall comply with the terms and conditions of the September 6, 2017 Review Memorandum of Leon S. Avakian, Inc. (A-9).
- rr. The Applicant shall comply with all prevailing/applicable Affordable Housing requirements/contributions/directives as established by the State of New Jersey, COAH, the Borough of Sea Girt, the Court System and/or any other Agency having jurisdiction over the matter.
- ss. The Applicant shall cause the Plans to be revised to portray and confirm the following:
 - The inclusion of a Note confirming a correct building height of 34.32 ft. (allowing the first floor elevation to be raised by approximately 8 inches.)
 - The inclusion of a Note confirming that the garbage can/trash area shall be enclosed with low maintenance vinyl fencing.
 - The inclusion of a Note confirming that the exterior lights will be turned off no later than 8:00 p.m.
 - The inclusion of a Note confirming that the no building coverage variance is required.

- The inclusion of a Note confirming that during the renovation/construction process, as approved herein, the Applicant's Representatives shall maintain/keep the existing foundation/building envelope.
 - The inclusion of a Note confirming that signage at the site shall comply with prevailing zoning regulations.
- tt. The mechanical equipment shall be located in a Zoning-Compliant location.
- uu. If requested by the Board Engineer, the Applicant shall submit a Grading Plan, which shall be approved by the Board Engineer.
- vv. The Applicant shall manage storm water run-off during and after construction (in addition to any other prevailing/applicable requirements/obligations.)
- ww. 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
- xx. If applicable, the proposed structure 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, if any, 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 necessary) for the construction / development approved herein.

BE IT FURTHER RESOLVED, that all representations made under oath by the Applicant and/or its agents shall be deemed conditions of the approval granted herein, and any misrepresentations 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

Wednesday, October 18, 2017

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: Carla Abrahamson, Larry Benson, Karen Brisben, Eileen Laszlo, Mayor Ken Farrell, Councilwoman Anne Morris, Ray Petronko, Norman Hall

AGAINST THE APPLICATION: Jake Casey

NOT ELIGIBLE TO VOTE: Robert Walker

A motion was then made by Mr. Petronko to accept this approving Resolution, this seconded by Mr. Benson and then by the following roll call vote:

Ayes: Carla Abrahamson, Larry Benson, Karen Brisben, Mayor Ken Farrell, Eileen Laszlo, Councilwoman Anne Morris, Ray Petronko, Norman Hall

Noes: None

Not Eligible to Vote: Jake Casey, Robert Walker

Before starting to hear the last application of the evening, the Board took a 5 minute recess. After the recess they turned to an appeal of the Zoning Officer's Decision and, in the alternative, request for Variance Relief for Block 84, Lot 8, 617 Beacon Boulevard, owned by Richard and Cynthia Bott, noncompliance with Resolution of 2013 for construction of new home. Side yard Setback for Deck – 5 feet required, 3.22 feet proposed. Encroachment of steps onto Borough property.

The proper fees were paid, taxes are paid to date and the property owners within 200 feet and the newspaper were properly notified. Before this hearing, Karen Brisben, Ray Petronko and Robert Walker all recused themselves; Karen Brisben asked to stay

on the dais as she is the Secretary of the Board and was recording the Minutes and this was acceptable to Gregory Vella, the attorney for the applicants. At this time Mr. Avakian was sworn in as he was the Borough's interim Zoning Officer.

Mr. Kennedy then marked the following Exhibits:

A-1. The application

A-2. A CAFRA permit letter dated 8/4/17

A-3. survey of the new deck dated 7/6/17

A-4. Survey with original deck dated 4/6/17

A-5. Seven pictures of access to Wreck Pond from neighbors' yards

A-6. Board Engineer report dated 10/6/17

A-7. Letter from Zoning Officer dated 6/21/17

A-8. Letter from Zoning Officer dated 7/20/17

A-9. Resolution from applicants' first appearance.

Mr. Greg Vella told the Board the Botts came before the Board in 2013 for variances to construct a new home, when they did this there was an existing deck on the plans with -0- setback. That enabling Resolution did say to remove the stairs that encroached on the Borough property but he wanted it known, as Exhibit A-5 shows, other properties in this area have steps. When the Botts removed the stairs they took the top of the deck off and redid the deck at a 3 foot side yard setback; they found out this caused a variance and that is why they are here (they had not applied for a permit to build this). He felt that increasing the setback from 0 feet to 3.22 feet does not require a variance and makes a bad situation better, so they have filed an appeal. However, in the alternative, they did submit an application for variance relief. He went on to say that when a nonconforming structure is existing and is going to be made less nonconforming a building permit can be issued. Let it also be on the record that an application did go out to the DEP for permission to do this work by Wreck Pond and the DEP approved same.

At this time Cynthia Bott came forward and was sworn in. She said they came before the Board back in 2013 to build their home at 617 Beacon Boulevard and, at that time, they had no idea of what they were going to do with the deck. In 2017 they started working on the steps. The existing deck was an odd shape and in disrepair so they pulled boards off the top and replaced them, they did not replace the footings. Mr. Vella marked as Exhibit A-10 a photo of the current existing deck taken by Mrs. Bott in September. She said on the picture the gray wood is the old and the white wood is the new foundation with the boards on top of that. The side yard piece did not have a footing so the builder put in a new footing and this kind of squared off the deck and

made it bigger which gave them more room by the property line. Mr. Vella asked if this is a benefit to them and their neighbors and the answer was yes.

Mr. Vella said that one of the issues was the removal of the steps and he referred to Exhibit A-5 and told of other properties here that have access to Wreck Pond. Mrs. Bott said they are putting in railroad ties and there is one step that goes on Borough property. If they took that step off there would be an 18 inch drop-off so they need that access. They maintain the portion of this Borough property as well as all the other neighbors in this area.

Mr. Vella said that the legal argument is that when they went to the Zoning Officer they should have to come back to the Board to ask for approval, the property owner is trying to make the nonconforming deck better. Their position is they are not needing a variance and this is a better planning alternative. If the Board does not think the Zoning Officer is wrong they are still asking for a variance. They also ask to be able to maintain the extra step on Borough property. Chairman Hall asked Mr. Vella to repeat the court case he referred to again. Mr. Vella said where a nonconforming structure is expanded and does not add to the nonconformity a building permit can be issued without the need to come before a Zoning Board, the Construction Official can grant this. Chairman Hall stated he said they "can" and not "must", he asked if a building permit was applied for and the answer was no; Mr. Vella said if a permit is required they will get it and will apply to the Building Department, explain that the deck is built and do what they need to do. Chairman Hall clarified that they did not apply for a building permit and put in new footings in one area and he asked if they had plans for this to show how the footings were put in? The issue is that new footings must be inspected to see if they comply. Mr. Vella said that would be up to the Building Department to decide and they will comply. Chairman Hall again said that footing inspections are required and again asked if they have plans for the deck? The answer was no. Chairman Hall then asked if they replaced the railing and Mrs. Bott said no as a Stop Work Order was issued and all work stopped. Chairman Hall asked if their contractor talked to them about needing a permit to do this work and Mrs. Bott said no, it was just one footing. Mr. Casey felt the northeast corner looks like the deck was expanded and that part is not shown in the picture, Exhibit A-10.

Councilwoman Morris asked about the old steps, did they take them out and then put another in and Mrs. Bott said the steps on Borough property were removed. The steps they are putting are built into the earth with railroad ties and there is one step on Borough property. Councilwoman Morris asked if they got a permit for that and Mr. Vella said a permit is not required for this; Chairman Hall agreed but said they do need Borough approval. Mrs. Laszlo if the property can be graded so they don't need this but Mr. Vella said they will address the town for it.

Mr. Avakian commented this is a precarious position, the Planning Board said take the step out but the bottom step is still going to be on Borough property. The proper venue is to come before Mayor and Council; he added this is not a DEP issue.

Mayor Farrell felt the original deck was a DIY project and the previous owner just did it with no permits, but our codes are in force and he wondered if the previous owner got a permit or just did it. Mr. Vella went back to the stair issue and said the board approved this site plan back in 2013 and Mayor Farrell answered that once it was changed it now has to conform. Mr. Vella said the Board could have had the deck removed back in 2013 but approved the plan as presented.

Mr. Ward asked if the old steps were removed and Mrs. Bott said yes, back in 2016, when they removed the stairs they did not realize it would limit their access and, since the neighbors on both sides of them have stairs to the Borough property they assumed it was okay. The stairs that were there was up in the air and they were taken out; they had a new home and then decided they wanted to redo the deck and did not think this was a violation. Chairman Hall asked when they hired a deck professional did they not tell them they needed a permit? Mrs. Bott said no. Mrs. Laszlo asked who the contractor was and Mrs. Bott said it was William Newberry, the same contractor who built the home. Chairman Hall was concerned about the safety of the structure and Mrs. Laszlo wanted to know who did the new footings and the answer was William Newberry, the steps were done by Carmen Campanelli's business. Chairman Hall said he had issues with not following the Resolution and then restructuring the deck without permits and he asked Mr. Avakian what should be done. Mr. Avakian said if a permit was requested it may have been granted, they may have to go to Council and they may grant the variance for the deck.

Chairman Hall asked if the Board upholds this or not and Mr. Kennedy felt this was a difficult situation on some levels. This problem is that the work was done without a permit and this could have been addressed at that time, but the testimony is they did not know they needed a permit. This is a pre-existing side yard setback and this restructuring makes it more compliant, which is a good thing. He felt this whole mess shows that the system works and he thought the one flaw with Mr. Vella's argument is that permits were never issued and this should have been sent to the Construction Official, but now the Board has to try to resolve it.

Also, Mr. Vella is asking the Board to reverse the Zoning Officer's decision; if the Zoning Officer is correct and the Board affirms this, then the Board can grant variance relief; or the Board can deny the application and the deck can be built correctly. He accepted their testimony that they did not know they were changing the deck and couldn't do that but the Board cannot approve the steps, they have to go to Council for this. Chairman Hall agreed this is not a normal application.

He then opened the hearing for questions or comments and, as there were none, that portion was closed. Chairman Hall said he wished there were a way to pretend this didn't happen and start over, ask the Zoning Officer if he can issue a permit on that court case Mr. Vella spoke of; then get sealed plans, and this is for the applicants' safety, there are accidents due to decks failing. He wanted to know if the Board can do

this as the Board needs to uphold the Zoning Officer. It is the Board's duty to review this and this deck is an after fact. There is a process that needs to be done.

Mr. Vella felt the safety aspect was easy, if the variance is granted they need to get permits and they need to go to the Building Inspector and he needs to see if the deck was constructed properly, if it was done wrong it will have to be done right. Chairman Hall said he has to follow what is on the plans and Mr. Vella realized they will have to submit plans and that is not an issue, this will be done to make it right. They are asking if they need a variance or not or fall under the C-2 variance, either way they will get permits.

Mr. Avakian said the Board is being put in a position of evaluating a Zoning Officer's decision, they are charged with upholding the codes and not case law, Mr. Quigley did what he was supposed to do and if the Board feels he was correct the Board can then address the variance application and permits can be applied for and granted. Or, on the other hand, the Board can feel the side yard setback is that important and can deny the application. Council may have to get involved, the property line cannot be seen outside in the field.

Mayor Farrell said that over the years the town had had different situations where walkways have been constructed on town property, and mentioned one on The Terrace; he thought two residents had to come in and put in stairs from the walkway to the road and Council granted that. This is also done with the walkways from Ocean Avenue to the Boardwalk, he felt there is no sense in not allowing the one step on Borough property but they need to see what is being done and not just doing it. The town likes conforming structures, even a deck and Sea Girt's codes are excellent; everyone takes care of the town property and help preserve it. He would like to see a conforming setback for the deck.

Chairman Hall felt the Board understands the situation and agreed with Mr. Avakian that Mr. Quigley is doing his job and it would be tough to override his decision but a process has to be followed for there is a safety issue. If this had gone unchecked the deck may not have been built to code.

Mr. Kennedy said the first order is to affirm or reverse the Zoning Officer's decision, if it is in the affirmative then the Board can address the deck variance. Chairman Hall suggested upholding Mr. Quigley's decision. Mr. Vella said that Mr. Quigley said they had reconfigured the deck and can put the deck back to what it was originally, with the -0- setback, he asked if that made sense. Mrs. Laszlo said they have now poured footings with no inspection and felt they have to go back and do the permit process the right way, the Board is being asked to correct a situation the Botts created and she was not comfortable with considering a variance approval. Mr. Casey still had a problem with the post that is not shown in the photo. Chairman Hall felt a sealed set of plans would clear this up. Mr. Ward asked if this can be approved except for the part

for rebuilding and Mr. Kennedy said yes and Mr. Vella said no, you can't pick and choose.

Mr. Vella again stated that Mr. Quigley said they have to go with the original deck from the 2013 plans and put the deck back to its original status. Mrs. Laszlo reminded him that no deck plans were submitted in 2013 and she read the part of Mr. Quigley's letter from June 2017 where the Botts were told what to do. There was then another brief discussion on affirming the Zoning Officer's decision and then addressing the variance. Mr. Kennedy asked if the Board wants the Zoning Officer to look at this again with a fresh set of eyes, if so, this can be carried; or the Zoning Officer's decision can be affirmed. Mr. Ward asked who is the Zoning Officer now and was told Chris Willms has taken this over as Interim Zoning Officer due to Mr. Quigley's being out of work due to sickness.

Mrs. Vella commented on Mr. Quigley's next letter in July and said violations will be issued if not addressed by August. Mrs. Brisben spoke up and said they were told to submit an application or be fined and they submitted the application. Mayor Farrell felt that, as long as a complete set of plans has to be submitted, it is not a big deal to put in the 5 foot setback and make the deck conform, get permits and get it done right; they also can come before Council and ask for the one step. Chairman Hall agreed they do not need variance relief if they make the 5 foot setback.

At this time Mr. Richard Bott asked to speak and was sworn in, he is one of the owners of 617 Beacon Boulevard. He said this whole mess is his fault, they had all the permits to build the home and he knew they had to take down the stairs; he assumed the deck was included in the permits. They did stop when they were told to and they want to do what is right at this point, if they can get drawings and cut it back does this go away? He said if the one step is on town property they can put in dirt here and again stated this was all his fault, he is a chef and not a builder. Mayor Farrell felt the step can be put in, that would be safer and they just have to come before Council. Mrs. Laszlo mentioned that the Resolution said the steps that encroached on the Borough property had to be removed, not all of them. Mayor Farrell then encouraged the Botts to come before Council.

Chairman Hall had no problem with the deck size and setback deficiency, this property that goes back to Wreck Pond, he just wanted to see the deck built correctly. Again another discussion was held on the affirming the Zoning Officer and case law. Mr. Kennedy said the flaw here is no permit was requested, the work was just done. Chairman Hall still felt the Board needs a set of plans to review and he would vote against this without plans. Mr. Vella said that as-built plans were submitted but Chairman Hall said they are not structural plans. Mr. Vella said if that is what the Board wants then they will do it, he asked that they be given the opportunity to get plans and submit them with the 3.22 foot variance request. Chairman Hall said they were more than welcome to come back with formal plans but the Board still has the right to deny the application.

At this point Mr. Vella asked for a 5 minute recess to confer with this clients and this was granted. After the recess he came back and said the Botts would like to withdraw the application and will apply to the town to keep the one step; they will comply with the 5 foot setback. Chairman Hall felt they may not want to do this, it was now very late and they may change their minds after thinking this over, if they withdraw they will have to start all over again if they decide to ask for the variance. Therefore, the application will be carried to the November 15th meeting of the Board without further notice, this will give the Botts time to think about this.

OTHER BUSINESS:

Mayor and Council had asked the Planning Board to address two Ordinance amendments they have introduced for the Board's input:

Ordinance 13-2017, regarding Zoning Permit fees

Ordinance 14-2017, regarding construction of a basement beneath an accessory or principal structure

Mrs. Laszlo addressed Ordinance 13-2017 and wanted to know what the fees were going up so high. Mayor Farrell explained that the current fees do not cover the costs; two of the fees go into escrow accounts and that money is refunded after the work is done. He used his own experience of putting in a walkway to the beach from his property as an example and he had to pay \$700 for inspections. Mr. Ward wanted to know where the 750 square feet that causes the fees came from and Mayor Farrell said he had suggested a dollar a foot fee; there is a list of things to include and the fees are not covering them. As far as a dollar a foot fee, Council did not want that. Mr. Petronko felt that perhaps having tiers based on the size of the construction may work. Mayor Farrell liked this idea as some homes are large and there is an issue of curbs being destroyed, etc. Mrs. Laszlo and Chairman Hall agreed that they can get a bond for this. Mayor Farrell commented on 15,000 lb. vehicles on dirt roads, the money would be for maintenance of the dirt roads. Mr. Petronko asked about a tree save provision and Mayor Farrell said this goes back 10 years and Council decided it was too hard to police and be enforced. Mrs. Laszlo felt that, if a tree is taken down, one can be put up on the property. Mayor agreed with all this but again spoke of enforcement difficulties. The final comment was that the Ordinance should be looked at with calculating the fees.

As far as Ordinance 14-2017 Mayor Farrell explained that a basement cannot go within 2 feet of the water table, in 2020 there will be a new flood map in the area of the town that is prone to flooding. No Board members had any issues with Ordinance 14-2017 and encouraged its passage. Mrs. Brisben was instructed to send a memo to Mayor and Council letting them know the Board's thoughts on both the Ordinances.

Wednesday, October 18, 2017

As there was no other business to come before the Board, a motion to adjourn was made by Councilwoman Morris, seconded by Mrs. Abrahamson and unanimously approved by voice vote, all aye. The meeting was adjourned at 11:03 p.m.

Approved: November 15, 2017

Wednesday, October 18, 2017