

SEA GIRT PLANNING/ZONING BOARD  
REGULAR MEETING  
WEDNESDAY, JUNE 16, 2021

The Regular Meeting of the Sea Girt Planning Board was held on Wednesday, June 16, 2021 at 7:00 p.m. virtually. 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. Roll call was then taken:

Present: Councilwoman Diane Anthony, Karen Brisben, Jake Casey,  
Mayor Ken Farrell, Stan Koreyva, Eileen Laszlo, Ray Petronko,  
Robert Walker, John Ward, Norman Hall

Absent: Carla Abrahamson

Board Attorney Kevin Kennedy was also present and Board Secretary Karen Brisben recorded the Minutes. It was announced that the Use Variance hearing for 201-205 Trenton Boulevard, owned by Mark & Maureen Angelo & 205 Trenton Blvd., LLC has been postponed. The applicants' attorney, Mr. Steve Hehl, was present and as the July agenda is full this hearing will be carried to the Wednesday, August 18<sup>th</sup> meeting of the Planning/Zoning Board with new notice; this was agreeable to Mr. Hehl.

Before going on Chairman Hall asked if anyone in the audience had any questions on any matter other than the applications this evening; there was no response. Mrs. Laszlo then made a motion to approve the Minutes of the Wednesday, May 19, 2021 meeting, this seconded by Mr. Walker and approved, all aye.

**OLD BUSINESS:**

The Board then turned to a Resolution of Approval for Block 8, Lot 1, 822 First Avenue, owned by Michael Lahue & Robin Pio Coast, renovations to an existing dwelling. Mr. Kennedy went over the conditions and the following was presented for approval:

**WHEREAS**, Michael Lahue has made Application to the Sea Girt Planning Board for the property designated as Block 8, Lot 1, commonly known as 822 First Avenue, 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 several additions to an existing single-family home; and

**PUBLIC HEARING**

**WHEREAS**, the Board held a remote Public Hearing on May 19, 2021, 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:

- *Development Application Package, introduced into Evidence as A-1;*
- *Architectural Plans, prepared by Kenneth J. Fox, AIA, dated August 27, 2020, consisting of 3 sheets, introduced into Evidence as A-2;*
- *Boundary and Topographic Survey, prepared by David J. Von Steenburg, dated September 29, 2020, introduced into Evidence as A-3;*
- *Building and Lot Coverage Calculation Worksheet, introduced into Evidence as A-4;*
- *Leon S. Avakian, Inc. Review Memorandum, dated May 7, 2021, introduced into Evidence as A-5;*
- *Photo-board, containing 4 photographs of the property in question (different views), introduced into Evidence as A-6;*
- *Affidavit of Service; and*
- *Affidavit of Publication.*

### **WITNESSES**

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

- Michael Lahue, Applicant;
- Kenneth Fox, Architect / Planner;
- Robin Pio Costa, the Applicant's spouse;
- C. Keith Henderson, Esq., appearing;

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

**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 32 years.
- There is an existing single-family home located at the site.
- The Applicant lives at the site as his primary residence.
- The existing Lot contains 10,222.5 SF.
- There is a need for the home to be upgraded in several respects.
- The Applicant's proposed improvements include the following:
  - Construction of a new porch and columns on the existing stoop;
  - Construction of a new 2<sup>nd</sup> floor sitting room, with look-out deck above, over the existing garage; and
  - Construction of a 2<sup>nd</sup> floor master bathroom over the existing dwelling.
- Details pertaining to the proposed improvements include the following:

Porch Roof:

Size: 48 SF

Location: South. portion of property, off of Neptune Place

Use: Porch

Sitting Room / Deck:

Size: Per Plans

Location: over the existing garage

Purpose: sitting room, w/ look-out deck above

Master Bath:

Size: Per Plans

Location: North Side of property

Purpose: Master Bath

- Upon completion of the renovation process, the renovated home will include the following:

First Floor

Living Room

Dining Room

Kitchen

Family Room

Bathroom

Porch

Garage

Second Floor

Master Bedroom

Master Bathroom

Sitting Room

Bedroom #2

Bedroom #3

Bedroom #4

Bathroom

Bathroom

Roof Deck

Look-out Deck

- Other proposed improvements include the following:
  - a re-siding of the home;
  - a changing of the windows;
  - the installation of dormers so as to improve the overall appearance.
- The Applicant anticipates that the renovation work will be completed in the near future.
- The Applicant will be utilizing Licensed Contractors in connection with the construction / renovation process.

**VARIANCES**

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

*BUILDING COVERAGE: Maximum 20% allowed; whereas 20.8% proposed.*

*INTEGRATED GARAGE SETBACK: 5 ft. required; whereas 1 ft. proposed;*

### **PUBLIC COMMENTS**

**WHEREAS**, there were no comments, questions, statements, and / or objections presented by any members of the public in connection with the Application; and

### **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, as amended is hereby **granted / 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 822 First Avenue, Sea Girt, New Jersey, within the Borough's District 1, East Single-Family Zone.
3. The subject property contains an existing single-family home.
4. Single-family use is a permitted use in the subject Zone.
- In order to increase the functionality of the existing home, make the home more functional, and in order to increase living space, the Applicant proposes the following:
  - Construction of a new porch and columns on the existing stoop;
  - Construction of a new 2<sup>nd</sup> floor sitting room, with look-out deck above, over the existing garage; and

- Construction of a 2<sup>nd</sup> floor master bathroom over the existing dwelling.
- 5. Such a proposal requires Bulk Variance 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 existing and to-be-continued single-family use at the site is a permitted Use in the Zone.
- There is an existing single-family home at the site, with an attached garage.
- There is a need for increased living space at the site – and the within Application has been designed to accommodate such a need in a non-invasive fashion.
- The Applicant's proposed improvements include the following:
  - Construction of a new porch and columns on the existing stoop;
  - Construction of a new 2<sup>nd</sup> floor sitting room, with look-out deck above, over the existing garage; and
  - Construction of a 2<sup>nd</sup> floor master bathroom over the existing dwelling.
- Portions of the additions will be constructed over the existing garage, or over other parts of the existing structure.
- The location of the proposed additions are practical, logical, and appropriate.
- The fact that the additions will be located over the existing structure confirms that there will be no material change to the existing ground-level footprint of the home.
- The fact that the additions will be located over existing structures furthermore reinforces the notion that the

additions will be constructed over land which has already been disturbed.

- In conjunction with the above point, there will be no new material land disturbance in connection with the construction / renovation approved herein. In fact, the testimony indicated that there will only be @56 SF of new livable space associated with the within Application.
- The Application as presented requires a Building Coverage Variance. The relevant calculations in the said regard include the following:

Maximum allowable building coverage .....  
20%

Existing building coverage .....  
15.29%

Proposed building coverage .....  
20.80%

- Typically, the Board Members are very sensitive about deviating from the Building Coverage Requirements – and typically, the Board would only grant Variance relief in extraordinarily compelling situations.
- For the reasons set forth herein, and the reasons set forth during the Public Hearing process, the Board finds that sufficiently compelling reasons exist to grant the requested Variance relief.
- The Board is aware that in many ways, the requested Building Coverage Variance is more technical in nature (than a substantive deviation). Specifically, per the Prevailing Zoning Regulations, the existing attached garage is not counted / included in the Building Coverage calculations. (As indicated, the existing Building Coverage at the site is 15.29%.) However, with the addition to be constructed over the existing garage, the existing garage will become an integrated garage, with living space. Per the Prevailing Zoning Regulations, the integrated garage space (i.e. the entire garage) will now be included in the Building Coverage calculations. Thus, upon construction of the addition over the garage, as approved herein, the Building Coverage will



increase from 15.29% to 20.80%, and hence, the Variance relief is required.

- Importantly, there is no material change to the existing ground-level footprint of the existing structure. (The testimony indicated that approval of the within Application will only increase the size of the existing structure by approximately 56 SF.) Rather, as indicated, the Applicant herein is merely constructing additions over the existing structures.
- Typically, Applicants seeking Building Coverage Variances are proposing to construct some type of addition / improvement which usually results in a materially physical enlargement of the building footprint / building envelope – but the same is not proposed / approved herein.
- The Board is aware that the Building Coverage deviation stems from the fact that the attached garage is not currently included in the Building Coverage calculations – but that the same will be included once the addition is constructed over the same.
- The Board acknowledges that the within situation is a very unique situation.
- The Board is also aware that typical / adverse by-products associated with other excessive Building Coverages are not present herein (resulting from the fact that the Building Coverage deviation essentially stems from the construction of an addition over the existing garage / existing structure).
- Per the testimony and evidence presented, the within Application complies with the Impervious Coverage Requirements.
- The Board is aware that other development options could have been sought to expand the home in ways which were much more impactful than presented herein – and the Board appreciates the Applicant's modest and reasonable proposal.
- The subject site can physically accommodate the renovations approved herein.
- The Board also notes that the subject lot is 10,222.5 SF, well in excess of the minimum 7,500 SF minimum requirement.

- Per the testimony and evidence presented, there is a need for the proposed improvements.
- The Board is aware that the application requires approval for a variance of the setback of an integrated garage. Towards that end, the Board is aware that the garage already exists, and the setback variance is triggered merely because, with the improvements above the same, the existing garage becomes an integrated garage, and the setback requirement changes (thereby making the currently complying garage setback become non-conforming.)
- The Board recognizes that it would be impractical to require the Applicant to remove or relocate an existing garage.
- Notwithstanding the integrated garage setback deviation, the Board recognizes that the location, footprint, orientation of the existing garage will not change as a result of the within approval.
- The Board notes, positively, that the application complies with the prevailing lot coverage/impervious coverage requirements.
- Approval of the within application will actually result in a reduction in the overall impervious coverage from 28.67 per cent to 23.16 per cent. (The reduction in impervious coverage is due to the fact that the area for the currently attached garage has been removed and included as part of the building coverage.)
- The application, as indicated, requires approval for a building coverage variance. Per the prevailing zoning ordinance, the same requires the Applicant to install a drywell, so as to help absorb some of the increased runoff water. In the within situation, the Applicant is providing such a drywell.
- A maximum 20 per cent building coverage is allowed; whereas, the Applicant herein is proposing a building coverage of 20.8 per cent. Under the circumstances, the Board finds that the said relief is de-minimus in nature.
- The Board is aware that the subject property has a fairly unique condition in that the subject property has frontage along three roads, namely Neptune Place, First Avenue, and Morven Place.

- The three frontages for the property, as aforesaid, complicate the ability of the Applicant to satisfy all prevailing bulk requirements.
- The Applicant's site / lot can physically accommodate the improvements proposed / approved herein.
- Subject to the conditions set forth 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.
- Subject to the conditions contained herein, the renovations approved herein will not over-power / over-whelm the subject Lot.
- Upon completion, the renovation approved herein will not over-power / dwarf other homes in the area.
- The renovations approved herein are attractive and upscale, in accordance with Prevailing Community Standards.
- Approval of the within Application will not detrimentally affect existing parking requirements at the site.
- As indicated, upon information and belief, the existing home was built several decades ago. The Board appreciates the Applicants' willingness to renovate and improve an older home (as opposed to mere demolition).
- There is value in approving Applications which preserve older homes.
- There is a significant amount of demolition occurring within the Borough of Sea Girt – and it is refreshing that the Applicants herein have decided to preserve an existing / older structure.
- The Borough's Master Plan essentially encourages the preservation of older homes when the same is possible – and approval of the within Application will advance such a goal / objective.

- Preservation of older homes represents a legitimate development goal.
- Sufficiently detailed testimony / plans were presented to the Board.
- The proposed improvements / renovations should nicely complement the property and the neighborhood.
- The Applicant's plan is well designed, reasonable, and overwhelmingly compliant with a majority of the prevailing bulk requirements.
- Subject to the conditions contained herein, the proposal will not appreciably intensify the single-family nature of the lot.
- Additionally, the architectural/aesthetic benefits associated with the proposal outweigh the detriments associated with the Applicant's inability to comply with all of the specified bulk standards.
- The architectural design of the renovated home approved herein will not be inconsistent with the architectural character of other single-family homes in the area (on similarly situated lots.)
- 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 renovation approved herein will not be inconsistent with other single-family improvements located within the Borough.

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

Based upon the above, and for other reasons set forth during the Public Hearing Process, 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 May 7, 2021 (A-5).
- c. The Applicant shall comply with any Affordable Housing Contributions / Directives as required 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.
- d. The Applicant shall cause the Plans to be revised so as to portray and confirm the following:
  - The inclusion of a note confirming that the generator will be located in a zoning-compliant location (as no variance for the same is approved).
  - The inclusion of a note confirming that the new air conditioning condensers will be located on the deck / roof, in a zoning-compliant location.

- The inclusion of a note confirming that there shall be additional landscaping added to the site, to better shield the generator and some of the other improvements proposed herein. Moreover, the said landscaping shall be perpetually maintained / replaced / replanted, as necessary.
  - The inclusion of a note confirming that if any trees from the site are removed, the same shall be appropriately replaced with similar like-size trees (so as to perpetually camouflage the generator from the view of neighbors and/or the public).
  - The inclusion of a drywell. (The details for the same shall be reviewed and approved by the Board Engineer.)
  - The inclusion of a note confirming that the installed drywell shall be installed and maintained in accordance with industry standards and other best practice requirement.
  - The inclusion of a note, if necessary, confirming that the Building coverage shall be 20.8 per cent.
- e. Unless otherwise waived by the Board Engineer, grading / drainage details shall be submitted so as to confirm the absence of any adverse impacts associated with the within proposal.
- f. The Plans shall be revised so as to eliminate all variances, but for the two variances approved herein (building coverage and integrated garage setback).
- g. The Applicant shall manage stormwater run-off during and after construction (in addition to any other prevailing / applicable requirements / obligations.)
- h. The Applicant shall obtain any applicable permits/approvals as may be required by the Borough of Sea Girt - including, but not limited to the following:
- Building Permit
  - Plumbing Permit
  - Electric Permit
  - Demolition Permit

- i. If applicable, the proposed improvement shall comply with applicable Provisions of the Americans with Disabilities Act.
- j. The proposed structure shall comply with the Borough's Prevailing Height Regulations.
- k. 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.
- l. 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.
- m. 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.
- n. The Applicant shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.
- o. If required by the Board / Borough Engineer, the Applicant shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.
- p. 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 for the construction / development approved herein.
- q. **The approval granted herein is specifically dependent upon the accuracy and correctness of the testimony and information presented, and the accuracy of the Plans submitted and approved by the Board. The Applicant is advised that there can be no deviation from the Plans**

approved herein, except those conditions specifically set forth or otherwise herein. In the event post-approval conditions at the site are different than what was presented to the Board, or different from what was otherwise known, or in the event post-appraisal conditions are not necessarily structurally sound, the Applicant and his representatives are not permitted to unilaterally deviate or build beyond the scope of the Board Approval. Thus, for instance, if the Board grants an Application for an existing building / structure to remain, the same cannot be unilaterally demolished (without formal Borough / Board consent), regardless of the many fine construction reasons which may exist for doing so. That is, the bases for the Board's decision to grant Zoning relief may be impacted by the aforesaid change of conditions. As a result, Applicant and his representatives are not to assume that post-approval deviations can be effectuated. To the contrary, post-approval deviations can and will cause problems. Specifically, any post-approval unilateral action, inconsistent with the testimony / plans presented / approved, which does not have advanced Borough / Board approval, and will compromise the Applicant's approval, will compromise the Applicant's building process, will create uncertainty, will create stress, will delay construction, will potentially void the Board Approval, and the same will result in the Applicant incurring additional legal / engineering / architectural costs. The Applicant is encouraged to be mindful of the within – and the Borough of Sea Girt, and the Sea Girt Planning Board, are not responsible for any such unilateral actions which are not referenced in the testimony presented to the Board, and / or the Plans approved by the Board. Moreover, the Applicant is to be mindful that the Applicant is ultimately responsible for the actions of the Applicant, his Agents, his representatives, his employees, his contractors, his engineers, his architects, his builders, his lawyers, and other 3<sup>rd</sup> parties.

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



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

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

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

FOR THE APPLICATION: Carla Abrahamson, Councilwoman Diane Anthony, Karen Brisben, Jake Casey, Mayor Ken Farrell, Eileen Laszlo, Ray Petronko, Robert Walker, Norman Hall

AGAINST THE APPLICATION: None

NOT ELIGIBLE TO VOTE: Stan Koreyva (Alternate Member)

ABSENT: John Ward

A motion to approve the above Resolution was made by Mrs. Brisben, seconded by Mayor Farrell and then by the following roll call vote:

AYES: Councilwoman Diane Anthony, Karen Brisben, Jake Casey, Mayor Ken Farrell, Stan Koreyva, Eileen Laszlo, Ray Petronko, Robert Walker, Norman Hall

OPPOSED: None

INELIGIBLE TO VOTE: John Ward

The Board then turned to the continued hearing for variance relief for Block 57, Lot 9, 410 Washington Boulevard, owned by George & Frances Pierce, to allow a screened porch & deck. Building Coverage – 20% maximum allowed, revised plans submitted, now 22.41% proposed.

Mr. Michael Rubino, Esq. came forward to present this continued hearing; Chairman Hall announced that this had been carried due to one objector having a notice issue. Mr. Rubino was agreeable to carrying this one month.

Mr. Kennedy then marked Exhibit A-6, a series of photos of the building & grounds of 410 Washington Boulevard. Exhibit A-7 was a revised application showing Frances Pierce as the sole owner as well as a correction of a few typo errors. Exhibit A-8 was revised architectural plans done by R. Villano, revised 5/26/21. A note from Mrs. Pierce's doctor speaking on her condition was marked as Exhibit A-9.

Mr. Rubino noted they have taken 2 feet from the porch and deck going from 10 feet to 8 feet; this reduced the overage coverage of the building to 22.41%. The home complies, they are asking to be able to raise the deck 4 feet so Mrs. Pierce can walk out of her home to the porch without going down stairs, he commented she uses 2 canes when walking. Mr. Rubino said he saw the home and can see why she needs the relief. As there were no Board questions Mr. Richard Villano, Architect came forward, he was sworn in at the original hearing. He explained the project has been reduced by 2 feet in depth of the deck and from the screened porch. Mrs. Brisben told the Board that she had the Zoning Officer, Chris Willms, checked the new building figures and they are correct at 22.41%. Mr. Rubino asked Mr. Villano about what will be under the deck and was told dirt, this does not affect the Impervious Coverage. Mr. Casey asked if the porch has been built and the answer was no. Mr. Petronko asked what the deck will be 8 feet, why not go less. Mr. Rubino answered that if they made it less they would just not have a deck as the room is needed for handicapped access, walker, wheelchair, etc. Councilwoman Anthony asked what is the coverage now and was told 16.82%. She then asked the same question as Mr. Petronko, why not make the deck smaller and Mr. Rubino explained that a handicapped person is entitled to enjoy the same rights as a person with no handicap. They are asking for her to be able to access her deck, if this were a new home it would have been built lower but it is existing at 4 feet from the ground and there is no way to change this. Mr. Ward asked if there were no deck, just the screened porch what would be the coverage and Mr. Rubino said just under 20%.

The hearing was opened for the public for questions and Sheryl Goski of 414 Washington Boulevard and asked why the plans were not done to comply when they were planned. Mr. Rubino said this was not discovered until after the home was done so they decided to ask for relief and there is ADA (American Disabilities Act) case law on this; Mrs. Pierce's problem is recognized by the ADA and the rules apply to single family homes as well as facilities. Upon a question by Ms. Goski if she can get relief if she wants it for her home, Chairman Hall explained there is not a zoning standard that allows this, a request for a variance has to be requested, which is what is being done here.

Julie Murray of 411 Trenton Boulevard questioned Mr. Villano's credentials, she said she didn't know where he went to school but he should have taken into account this handicap. Chairman Hall felt she was out of order and was not allowed to speak any more. Mr. Villano said he did not realize this problem when he designed the home and that Mrs. Pierce needed handicapped relief. Mr. Rubino said Mrs. Pierce is not required to move her home around and asked Mrs. Pierce to give testimony.

Mrs. Pierce came forward and was reminded she is still under oath. She asked the Board to note the letter from her doctor about her condition, Mr. Rubino said she has been diagnosed with arthritis in her legs and has had surgery; she fell in 2016 and in 2020 and now has a fear of falling and uses one or two canes as needed. She also has a dislocated shoulder and a copy of her handicapped sticker for her car was submitted to the Board.

As there were no Board questions or questions from the audience, Joseph Kociuba of KBA Engineering came forward to give testimony as an Engineer and Professional Planner. As Mr. Kociuba is familiar to the Board he was accepted as an expert witness. The home is conforming and is in a Residential Zone with some construction being done, the building coverage is a little over 16%. If the proposed deck were below 16 inches it would not be included in building coverage and he noted that all setbacks conform. The home is older, newer homes are built closer to grade, this home is at grade 13 feet in the front and 12 feet in the rear, the height of the proposed deck could be at elevation 14.3 feet and would require 5-6 steps. The request is to elevate the deck 2 feet 10 inches to allow the owner to go out straight from her home to the deck; with the new screened porch the home will be at 19.5% coverage.

The variance request can be granted under the C-1 and C-2 criteria; this is not a new home, the only change was a small addition of a family room and the finished floor cannot be lowered. Mr. Kociuba also spoke of the ADA and Fair Housing Act and said there are cases that allow disabled people to have equal opportunity to use their home. The building coverage is exceeded but the Board has to ask if this is a reasonable request. This can be granted under C-2 as the zoning is advanced and there is no detriment to the zoning or general welfare; the only negative criteria is the elevated deck which will be equal to the first floor and, in his opinion, this is not a detriment as it is an open deck and the use is permitted in this zone and they are common. The shifting of the deck does no harm to the zoning plan, the benefits outweigh the detriment.

Mr. Kociuba then presented Exhibit A-10, a series of photos of the property looking east, west, to the rear and southeast. Mr. Rubino added there will be even more landscaping added than what is there now. Chairman Hall asked for confirmation that this house is at 5 feet and is higher than the grade and the answer was yes. Councilwoman Anthony asked if there were any photos of the home and Mr. Rubino said they showed the back of the home where the construction will be. Councilwoman Anthony said she was just trying to visualize what this will look like. Mr. Rubino said there were photos of different parts of the home, not the total but the plans themselves show this. Mr. Rubino said they just did photos of where the porch and deck will be. Mr. Kociuba put of the plans again so Councilwoman Anthony could see them. Mr. Casey said the builder, at the last meeting, said the deck is going up either way and is that still true? Mr. Rubino said they would have to look into it, they may have to go to court under the ADA rules for relief. She can have the deck built so it conforms and she will have the option of going to court to ask it to be raised.

Mr. Petronko still had a problem with the deck being so deep, he could see the height need; he felt they could take off another 1.5 feet and felt the deck would then be in compliance. Mr. Kociuba said that taking off 1.5 feet will not eliminate the variance

need as the coverage of the home is at 19.5%. Mr. Petronko asked why those numbers were picked for a deck and Chairman Hall reminded him there may be a need for wheelchair access or use of a walker and this room will be needed to go out on the deck. Mr. Kociuba said the ADA does have specifications on this, a certain amount of space is needed and he felt an 8 foot deck is reasonable, it is were smaller it would be difficult for chairs and tables. Mr. Walker asked if they considered reducing the size of the screened porch and Mr. Rubino said they are before the Board for relief for the deck, it is a reasonable request.

Councilwoman Anthony could see the issue of raising the deck as far as the ADA but now this is going over the building coverage, is that included? Mr. Kociuba said there is a need to provide reasonable access for a handicapped person. Mr. Rubino said Mrs. Pierce was dealt a hand here with the home above grade. Mr. Kociuba said the Board's job is to decide if this variance request is reasonable for the ADA. Mr. Rubino cited two other towns, Avon and Spring Lake Heights, where similar applications were heard; if Mrs. Pierce did not have problems they would not even be here. She is 80 years old and is asking for relief.

Mr. Casey asked what was the kick-out on the west side of the home and was told it is the chimney; Chairman Hall said that is not part of building coverage.

Mr. Rubino then summarized the application and noted they are going over the 20% building coverage and asking relief to give Mrs. Pierce access to her deck. A case was made for hardship due to the grade of the existing home. This request complies with the ADA and Fair Housing Act.

The hearing was then opened to the public for general comments and, as there none, the Board went into discussion. Chairman Hall asked Mr. Kennedy to speak on the ADA and Mr. Kennedy said this is difficult and a legally complex matter. The ADA is for making reasonable accommodations for handicapped people to enjoy the same rights as a non-handicapped person can. Also, the C-1 and C-2 standards have been discussed. The Board has to ask what is reasonable and what is unreasonable here, who has the burden, the applicant or the Board? Does the ADA trump the Zoning standards of the town? There may be litigation if this is not approved and that makes him a little nervous, but there may be litigation if this is approved or not approved. He would have to do a little more research. Mr. Rubino said he can file a full memo if required on this. Mr. Kennedy said there are tough decisions here and to remember the variance relief runs with the land, he does not have more knowledge on the ADA.

Mr. Ward asked if the Resolution can state that if a non-handicapped person moves into the home the deck has to be taken down to size. Chairman Hall did not want to see litigation here and this is 2% over, the home itself is built higher than normal and he was not in favor of carrying this hearing to get more information on the ADA. To him this is not a negative and he can see the hardship. Mr. Rubino again said he can do a full legal memo if needed. Mr. Walker was for the application, he said the screened porch is okay and the raised deck was necessary. Mrs. Laszlo said this was not taken down, it was renovated and the owner is handicapped, she was for approval. Mr. Koreyva agreed with Mrs. Laszlo and felt it was a great application, he was ready to vote yes. Mr. Ward commented he was not able to vote as he was absent last month

but he would like to see a condition that the deck be taken down to size with a new owner. Mr. Petronko cannot vote on this either, he understood the situation but felt the Board should do homework on the ADA, this is a great application to learn from and he was in support. Mayor Farrell said this was 12% over in building coverage maximum and he did not feel it had to be so much over. Mr. Casey wished this application had come in sooner so the proper accommodations could be given, a 12% addition to the building coverage maximum is excessive and he was not in support. Councilwoman Anthony agreed the architect and builder should have worked on this to keep it under the maximum and wondered what precedent is being set? She was perplexed as to the explanation of the ADA and was uncertain as to whether this applies to the size of the deck and porch, what is reasonable under the ADA?

Mr. Rubino was then asked if they should vote this evening or carry it for more information on ADA standards. Mr. Rubino said the client is not in favor of leaving the burden on the next owner of removing the deck and he asked for a vote on the application this evening.

Mrs. Laszlo then made a motion to approve the application as revised, this seconded by Mrs. Brisben. Mr. Kennedy then went over the conditions, after which Mr. Rubino commented that this is only the third time he has had this issue come up and he has been around a long time, he was satisfied this is a disabled case. Mrs. Laszlo reminded all that, for the Planning/Zoning Board, each case stands on its own.

As a motion and second had been made for approval, the following roll call vote was taken:

Ayes: Karen Brisben, Stan Koreyva, Eileen Laszlo, Robert Walker, Norman Hall

Noes: Councilwoman Diane Anthony, Jake Casey, Mayor Ken Farrell

Not Eligible to Vote: Ray Petronko, John Ward

#### OTHER BUSINESS:

Before adjourning, Chairman Hall said he had wanted to have a discussion on homes having additional kitchens and front yard setbacks regarding porches but the time was late. He did commend the fine job this Board does and he applauded all for what they do.

As there was no other business to come before the Board, a motion to adjourn was made by Mayor Farrell, seconded by Mr. Walker and approved unanimously, all aye. The meeting was adjourned at 9:40 p.m.

Approved: July 21, 2021

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Karen S. Brisben, Board Secretary

Wednesday, June 16, 2021