

SEA GIRT PLANNING BOARD
WEDNESDAY, JANUARY 27, 2021

The Reorganization Meeting of the Sea Girt Planning Board was held on Wednesday, January 27, 2021 at 4:00 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.

After a Salute to the Flag, the following members were sworn in:

Class I Member Mayor Ken Farrell through 12/31/21
Class II Member Karen Brisben through 12/31/21
Class III Member Councilwoman Diane Anthony through 12/31/21
Class IV Member Carla Abrahamson through 12/31/24
Class IV Member Jake Casey through 12/31/24
Class IV Member Eileen Laszlo through 12/31/24
Class IV Member John Ward through 12/31/24
Alternate Member #1 Robert Walker through 12/31/22

Roll call was then taken:

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

Absent: None

Kevin Kennedy, Board Attorney, was also present; Board member and Secretary Karen Brisben recorded the Minutes. A motion to approve the Minutes for November 18, 2020 was made by Mrs. Abrahamson, seconded by Mayor Farrell and approved by voice vote, all aye.

It was then time for the election of Chairperson and Vice-Chairperson for 2021, Mr. Petronko nominated Norman Hall to this position and Eileen Laszlo to the position of Vice-Chairperson. As no other nominations were made this motion was seconded by Mr. Casey and approved by voice vote, all aye.

The following Resolutions were then presented for approval:

Board Attorney

WHEREAS, the Sea Girt Planning Board is a duly organized Planning Board (hereinafter referred to as "Planning Board") having principal offices at 321 Baltimore Boulevard, Sea Girt, NJ; and

WHEREAS, there is a need for the Planning Board to retain the services of a Board Attorney in order to represent its legal interests; and

WHEREAS, Kevin E. Kennedy, Esq., (hereinafter referred to as "Attorney") has expressed an interest in representing the Planning Board in the said regard; and

WHEREAS, the legal services to be provided are deemed to be "professional services" pursuant to the Local Public Contracts Law (N.J.S.A. 40:A11-1, et seq.); and

WHEREAS, the Local Public Contracts Law authorized the awarding of a Contract for "Professional Services" without public advertising for bids and bidding therefore, provided that the Resolution authorizing the Contract and the contract itself are available for public inspection in the Office of the Municipal Clerk and that notice of the awarding of the Contract is published in a newspaper of general circulation in the municipality; and

WHEREAS, the Planning Board, having considered the matter, now wishes to authorize the awarding of a Professional Service Contract to Kevin E. Kennedy, Esq., for the purpose of rendering necessary legal advice.

NOW, THEREFORE, BE IT RESOLVED by the Sea Girt Planning Board as follows:

1. That the Sea Girt Planning Board is hereby authorized to award a Contract to Kevin E. Kennedy, Esq. so as to represent its interests, as General Counsel, in connection with all Planning Board matters.
2. That the compensation associated with the said representation shall be \$140.00 per hour, and shall be memorialized in a Contract for Legal Services, which is incorporated herein at length.
3. That the Contract for Legal Services shall contain a Provision whereby the Contract can be terminated, with or without cause, upon thirty (30) days written notice.
4. That the Board Chair, Vice-Chair, Secretary and other appropriate representatives are hereby authorized to sign the said Professional Service Contract, which, if necessary, shall be approved as to form by the Borough Attorney.
5. That the within Contract is awarded without competitive bidding as a "Professional Service" in accordance with N.J.S.A. 40A:11-5, et seq. of the Local Public Contracts Law of New Jersey because the services rendered will be performed by persons authorized by law to practice a recognized profession.
6. That, in accordance with N.J. law, notice of the within appointment shall be published in one of the Borough's official newspapers.

Board Engineer

WHEREAS, the Sea Girt Planning Board is a duly organized Planning Board (hereinafter referred to as "Planning Board") having principal offices at 321 Baltimore Boulevard, Sea Girt, NJ; and

WHEREAS, there is a need for the Planning Board to retain the services of a Board Engineer in order to represent its engineering interests on designated/authorized matters; and

WHEREAS, Peter R. Avakian, P.E., PLS, P.P., (hereinafter referred to as the "Engineer") has expressed an interest in representing the Planning Board in the said regard; and

WHEREAS, the engineering services to be provided are deemed to be "professional services" pursuant to the Local Public Contracts Law (N.J.S.A. 40:A11-1, et seq.); and

WHEREAS, the Local Public Contracts Law authorizes the awarding of a Contract for "professional services" without public advertising for bids and bidding therefore, provided that the Resolution authorizing the Contract and the Contract itself are available for public inspection in the Office of the Municipal Clerk and that notice of the awarding of the Contract is published in a newspaper of general circulation in the municipality; and

WHEREAS, The Planning Board, having considered the matter, now wishes to authorize the awarding of a professional service contract to Peter R. Avakian, P.E., PLS, P.P., for the purpose of rendering necessary engineering advice.

NOW, THEREFORE, BE IT RESOLVED by the Sea Girt Planning Board as follows:

1. That the Sea Girt Planning Board is hereby authorized to award a Contract to Peter R. Avakian, P.E., PLS, P.P. so as to represent its interests as Board Engineer in connection with designated/authorized Planning Board matters.
2. That the compensation associated with the said representation shall be consistent with the compensation rate the Engineer receives in his capacity as Borough Engineer. Additionally, the appointment terms shall be memorialized in a Contract.
3. That the Board Chair, Vice-Chair, Secretary and other appropriate representatives are hereby authorized to sign the said Professional Service Contract, which shall be approved as to form by the Borough Attorney or Board Attorney.

4. Any payment to be tendered hereunder shall be subject to the Borough's Finance Office confirming that funds are available for the stated purpose.
5. That the within Contract is awarded without competitive bidding as a "professional service" in accordance with N.J.S.A. 40A:11-5, et seq. of the Local Public Contracts Law of New Jersey, because the services rendered will be performed by persons authorized by law to practice a recognized profession.

That, in accordance with N.J. law, notice of the within appointment shall be published in one of the Borough's official newspapers.

Meeting Dates

WHEREAS, an act of the Legislature known as the "Open Public Meetings Act" enacted October 21, 1975, requires that advance notice be given of all regularly scheduled meetings of the Planning/Zoning Board of the Borough of Sea Girt, this act becoming effective January 19, 1976,

NOW, THEREFORE, BE IT RESOLVED by the Planning/Zoning Board of the Borough of Sea Girt that:

The third Wednesday of the month is hereby set for meetings of the Sea Girt Planning/Zoning Board for the year 2021, meetings held virtually until further notice:

January 20, 2021	February 17, 2021
March 17, 2021	April 21, 2021
May 19, 2021	June 16, 2021
July 21, 2021	August 18, 2021
September 15, 2021	October 20, 2021
November 17, 2021	December 115, 2021

A copy of this Resolution shall be posted on the public bulletin board in the Borough Hall and published in one of the official newspapers of the Board.

Planning Board Secretary

WHEREAS, the Sea Girt Planning Board is a duly organized Land Use Board, operating and existing in accordance with the Laws/Regulations of the State of New Jersey and the Borough of Sea Girt; and

WHEREAS, it is necessary and appropriate for the Board to appoint the Board Secretary to handle the administrative affairs of the Board; and

WHEREAS, the absence of a Board Secretary can potentially compromise the efficient operations of the entity;

NOW, THEREFORE, BE IT RESOLVED by the members of the Sea Girt Planning Board as follows:

1. That Karen Brisben is hereby appointed as Planning Board Secretary for calendar year 2021 or until such time as her successor is appointed and qualified.
2. That the compensation for the said position shall be established by the Borough of Sea Girt.

Official Newspapers

WHEREAS, the Sea Girt Planning Board is a duly organized Land Use Board, operating and existing in accordance with the Laws/Regulations of the State of New Jersey and the Borough of Sea Girt; and

WHEREAS, under Prevailing Regulations, it is necessary for the Planning Board to establish official Borough newspapers; and

WHEREAS, the listed/identified newspapers will be the newspapers in which Board-related notices can be lawfully advertised/published;

NOW, THEREFORE, BE IT RESOLVED by the members of the Sea Girt Planning Board as follows:

That the Planning Board hereby establishes the following 2 newspapers as the Board's Official Newspapers: The Coast Star
The Asbury Park Press

That the within Resolution shall take effect immediately.

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

Ayes: Carla Abrahamson, Councilwoman Diane Anthony, Karen Brisben, Jake Casey, Mayor Ken Farrell, Eileen Laszlo, Ray Petronko, John Ward, Norman Hall

Noes: None

Not Eligible to Vote (Alternate Members): Stan Koreyva, Robert Walker

Chairman Hall announced, as time was limited this afternoon, the Resolutions for Meeting Protocol, Meeting Time Limits and the Secretary's Annual Report will be voted on at the February 17th Regular Meeting. Mrs.

Brisben then gave her email address in case anyone was having trouble logging on to this meeting.

OLD BUSINESS:

The Board then considered an approval of a Resolution for Block 5, Lot 7, 2 Seaside Place, owned by Glenn & Dana Hughes, to allow construction of a new home. Mr. Kennedy went over the conditions and commented on a letter he had received from the applicant's attorney, Keith Henderson, asking for a few minor changes (all Board members had received a copy of this letter as well). As the Board was satisfied with the changes proposed, the following was presented for approval:

WHEREAS, Glenn and Dana Hughes have made Application to the Sea Girt Planning Board for the property designated as Block 5, Lot 7, commonly known as 2 Seaside Place, Sea Girt, New Jersey, within the Borough's District 1, East Single-Family Zone, for the following approval: Bulk Variance Approval associated with a request to effectuate the following:

- Demolition of an existing single-family structure; and
- Construction of a new single-family home, detached garage, cabana, and swimming pool;

PUBLIC HEARINGS

WHEREAS, the Board held remote Public Hearings on July 15, 2020, September 16, 2020, and November 18, 2020, 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:

- *Sea Girt Planning Board Application Package, introduced into Evidence as A-1;*

- *Leon S. Avakian, Inc. Review Memorandum, dated July 1, 2020, introduced into Evidence as A-2;*
- *Plot Plan, prepared by WSB Engineering Group, P.A., dated December 23, 2019, last revised February 27, 2020, introduced into Evidence as A-3;*
- *Architectural Plan, prepared by CJ Aker, R.A., dated December 23, 2019, introduced into Evidence as A-4;*
- *Location Survey, prepared by WSB Engineering Group, dated July 17, 2017, introduced into Evidence as A-5;*
- *Zoning Denial Letter, dated March 20, 2020, introduced into Evidence as A-6;*
- *Architectural Rendering (eastern elevation), prepared by CJ Aker, dated July 14, 2020, introduced into Evidence as A-7;*
- *Architectural Rendering (front elevation), prepared by CJ Aker, dated July 14, 2020, introduced into Evidence as A-8;*
- *Architectural Rendering (rear / south elevation), prepared by CJ Aker, dated July 14, 2020, introduced into Evidence as A-9;*
- *Resolution of the Sea Girt Planning Board, introduced into Evidence as A-10;*
- *Plot Plan, prepared by WSB Engineering Group, dated December 23, 2019, last revised August 25, 2020, introduced into Evidence as A-11;*
- *Architectural Plan, prepared by CJ Aker, dated December 23, 2019, last revised August 24, 2020, consisting of 3 sheets, introduced into Evidence as A-12;*
- *Leon S. Avakian, Inc. Review Memorandum, dated July 1, 2020, last revised September 8, 2020, introduced into Evidence as A-13;*
- *Plot Plan, prepared by WSB Engineering Group, dated December 23, 2019, last revised October 27, 2020, introduced into Evidence as A-14;*

- *Architectural Plan, prepared by CJ Aker, dated December 23, 2019, last revised October 21, 2020, introduced into Evidence as A-15;*
- *Leon S. Avakian, Inc. Review Memorandum, dated July 1, 2020, last revised November 4, 2020, introduced into Evidence as A-16;*
- *Power Point Presentation, reviewed / discussed at the November 18, 2020 remote Planning Board Meeting, introduced into Evidence as A-17;*
- *Affidavit of Service;*
- *Affidavit of Publication.*

WITNESSES

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

- Glenn Hughes, Applicant;
- Dana Hughes, Applicant;
- CJ Aker, Architect;
- Frank Baer, Engineer / Planner;
- Andrew Janiw, Professional Planner;
- C. Keith Henderson, Esq., appearing;

TESTIMONY AND EVIDENCE PRESENTED BY THE APPLICANTS'

REPRESENTATIVES

WHEREAS, testimony and other evidence presented by the Applicants' and / or their representatives revealed the following:

- The Applicants are the Owners of the subject property.
- There is an existing single-family home at the site.
- The existing home is quite old, having been built, upon information and belief, in or about the 1950's.
- The existing single-family home at the site is not really built for the needs of a modern family.

- The Applicants herein propose to effectuate the following:
 - Demolition of an existing single-family structure; and
 - Construction of a new single-family home, detached garage, cabana, and swimming pool;
- The to-be-constructed home, as amended, will include the following:

Basement

Living Room
Workout Room
Bedroom
Bar Area
Wine Room
Bathroom
Billiard Room
Mechanical Room

First Floor

Dining Room
Breakfast Room
Kitchen
Living Room
Mud Room
Powder Room
Foyer
Covered Portico

Second Floor

Master Bedroom
Master Bathroom
Bedroom
Bedroom
Bedroom
Bathroom
Bathroom
Laundry Room

Top Half Story

Den / Sitting Area
Playroom
Bathroom
Finished Attic Space
Unfinished Attic Space
Covered Deck

- Details pertaining to the proposed garage include the following:

Type of garage:	Detached
Location:	Rear of property
Size:	465 SF
Height:	17.6 ft.

- Details pertaining to the proposed cabana include the following:

Size:	120 SF
Location:	Between the garage and swimming pool
Features:	The same will include a shower and bathroom
Wall height:	8 ft. (conforming)
Roof pitch:	5 / 12 (conforming)

- Details pertaining to the proposed pool include the following:

Type of pool:	In-ground pool
Location:	In between the home and the garage (rear portion of property) (per Plans)
Size:	Per Plans
Water depth:	6 ft.
Dive board?:	The proposed pool will not have a diving board

- It is anticipated that the demolition and construction will be completed in the near future.
- The Applicants will be utilizing licensed contractors in connection with the demolition / construction work.

VARIANCES

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

PRINCIPAL BUILDING HEIGHT: Maximum 35 ft. allowed; whereas 37.6 ft. proposed;

GARAGE HEIGHT: Maximum 16 ft. allowed; whereas 17.6 ft. proposed;

SIDE YARD SETBACK (FIREPIT) (FROM THE ALLEY WAY): 15 ft. required; whereas 12 ft. proposed;

LOT DEPTH: 150 ft. required; whereas 130 ft. exists, which is an existing condition;

POTENTIAL FENCE HEIGHT VARIANCE: Maximum 6 ft. allowed; whereas, in the within situation, the Applicant is proposing a 4 ft. high fence on top of a 3 ft. retaining wall;

PUBLIC COMMENTS

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

- Kathleen Melli
- Tom Britt
- Ann Britt, Esq.
- John Bruno
- Wayne Dreyer

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 **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 2 Seaside Place, Sea Girt, New Jersey, within the Borough's District 1 East, Single-Family Zone.

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

4. The existing structure is not built for the needs of a modern family.

5. As such, the Applicants propose the following:

- Demolition of an existing single-family structure; and
- Construction of a new single-family home, detached garage, cabana, and swimming pool.

6. Details pertaining to the proposed single-family home and other proposed improvements are set forth elsewhere herein and are also set forth on the submitted Plans.

7. Such a proposal requires Bulk Variance Approval.

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

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

- The proposed single-family use is a permitted use in the subject Zone.
- The proposed garage is a permitted accessory use in the subject Zone.
- The Applicants initially submitted a proposal which, respectfully, was just too intense, too large, and required too much Variance relief. At the July 15, 2020 meeting, the Board Members expressed concerns regarding some elements of the initial proposal – including concerns regarding the size of the home, the height of the home, the size of the garage, the height of the garage, coverage

issues, window well issues, driveway / curb setback issues, and the like. The Applicants thereafter decided to adjourn the Hearing so that they could attempt to revise the Plans so as to address some of the aforesaid Board concerns. The revised Plans were officially reviewed / discussed at the September 16, 2020 Board Meeting. At that time, many Board Members did not feel that enough of the previously expressed Board concerns had been satisfactorily addressed. As a result, the Board Members again expressed a desire to deny the Application due to some of the overwhelming aspects of the proposal (particularly with regard to non-conforming height, coverage, etc.). The Public Hearing was again adjourned so that the Applicants could further revise Plans so as to address some of the concerns of the Board Members and concerns of the public. Revised Plans were again submitted, and the same were publicly discussed, at the November 18, 2020 continued Planning Board Hearing. At the November 18, 2020 meeting, the Applicants' representatives advised as to the nature of some of the Plan revisions – including, the following:

- a. Confirmation that the width of the home was reduced by 3 ft. thereby increasing the Side Yard Setback;
 - b. Confirmation that the firepit was relocated so as to be 12 ft. off of the alley way;
 - c. Confirmation that the window wells were reduced so as to comply with Prevailing Borough Regulations;
 - d. Confirmation that the curb-cut was reduced (so as to comply with Prevailing Design Regulations);
 - e. Confirmation that the house was reduced to a height of 37.6 ft.;
 - f. Confirmation that the garage height was reduced to 17.6 ft.; and
 - g. Confirmation that the pergola had been removed from the front yard.
- The majority of the Board Members are of the opinion that the aforesaid revisions substantially improved the overall acceptability of the proposal.
 - The majority of the Board Members are of the opinion that the aforesaid revisions substantially rendered the proposal much more compatible with the neighborhood.

- The majority of the Board Members are of the opinion that the aforesaid revisions represent an appropriately scaled design for the project.
- The majority of the Board Members are of the opinion that the aforesaid revisions mitigate any adverse impacts otherwise associated with the non-conforming elements of the subject proposal.
- The majority of the Board Members are of the opinion that the aforesaid revisions eliminated the nature / extent / number / impact of the requested Variance relief, thereby resulting in a better overall proposal.
- The Application as initially submitted required approval for approximately 12 Variances.
- There was a discussion that 12 Variances represented a significant amount of Variances in connection with a proposal which involved the construction of a new structure on a soon-to-be-vacant Lot. That is, there was a concern that with a so-called blank slate / soon-to-be vacant land, the Applicants could be more creative and more sensitive about submitting a proposal which satisfied and complied with more of the Borough's Prevailing Zoning Regulations.
- The ultimately revised Application requires approval for approximately 5 or 6 Variances, which is significantly less than the number of Variances initially requested.
- While it is preferable to eliminate the number of Variances when possible / practical, the Board is keenly aware that the number of Variances (associated with a proposal) is much less important than the overall impact of any particular Variance or combination of Variances.
- The Board is aware that even 1 ill-advised Variance can, in some circumstances, have more of a detrimental impact on the community than situations where many Variances are otherwise approved.
- The Board finds that, subject to the conditions contained herein, the Variance relief associated with the revised Application can be granted without causing substantial detriment to the public good.
- The Board appreciates the Applicants' concessions, which resulted in a far superior proposal (than what was initially submitted).

- Given the fact that the Applicants will be starting with a blank slate, or vacant land, it is appropriate for the Applicants to comply with as many Zoning Regulations as possible.
- The Application as presented requires a Height Variance for the principal structure and a Height Variance for the garage/accessory structure.
- Specifically, the prevailing Zoning Ordinance allows a principal structure to have a height of 35 ft.; whereas 37.6 ft. is proposed herein.
- Likewise, under the prevailing Zoning Regulations, a free-standing garage is permitted be no taller than 16 ft.; whereas the Applicants herein are proposing a garage height of 17.6 ft.
- The Board is aware that with regard to the principal structure, a Height Variance can be either a Bulk “c” Variance or a Use / “d” Variance, depending upon the nature/extent of the height deviation.
- In conjunction with the above point, the Board notes that the height deviation proposed herein constitutes a “c” Variance, requiring Bulk “c” relief.
- The Sea Girt Planning Board Members critically analyzed the height of the proposed structures.
- The Board is aware that the Borough of Sea Girt previously modified how building height is technically calculated.
- The Board Members are furthermore aware that with the Prevailing Building Height calculation method, it is more difficult for new structures on elevated lots to comply with the prevailing height regulations.
- The Applicants’ lot herein is, in fact, elevated.
- The elevated nature of the lot complicates the ability of the Applicants to satisfy the prevailing height requirements.
- The Board is aware that the height deviation approved herein is being driven, in many respects, because of the geographical realities associated with the existing elevated lot.
- The Board notes that if the subject lot (i.e. the Applicants’ lot) was at grade, (as opposed to being elevated), then, in that event, the

within Application would not require Height Variance Relief (for the principal structure / home).

- The Board notes, positively, that the physical height of the home approved herein, (measured from the actual bottom of the home to the top of the home) is roughly 35 ft. (i.e. a home which complies with the Borough's 35 ft. height limitation). However, the within height deviation stems from how the Borough's prevailing Zoning Ordinance requires a principal structure (on an elevated lot) to be actually measured.
- Likewise, in conjunction with the above point, the Board is aware that the garage structure approved herein measures 16 ft. (from the actual bottom of structure to the top of the structure) – (i.e. a structure which complies with the 16 ft. height limitation otherwise allowed per prevailing Borough Zoning Ordinances). However, the Board is aware that the height deviation (for the garage) stems from how the Borough's prevailing Ordinance requires the garage structure (on an elevated lot) to be actually measured.
- Notwithstanding the height deviations, the structures approved herein will not overpower/overwhelm the site, the area, or the neighborhood.
- The structures approved herein (with the non-conforming height,) will not be inconsistent with the appearance/height of other homes on the area (on similarly situated elevated lots).
- Given the elevated nature of the subject lot, and the calculation method used by the Borough of Sea Girt, (for measuring Building Height), in many ways, the subject lot is a unique lot.
- Given the nature of the elevated lot, and how the Borough measures building height, it is, essentially, a hardship for the Applicants herein to comply with the Borough's Prevailing Height Requirements.
- If the Height Variance were not granted, the same could, under the circumstances, and per the testimony and evidence presented, potentially compromise the architectural integrity, beauty, and functionality of the proposed home.
- The Application as presented requires Variances for the height of the proposed single-family home and the height of the proposed detached garage (other Bulk Variance relief is required as well).

- The Borough of Sea Girt Essentially requires structures to be measured from the crown of the road.
- In the within situation, the natural grade of the subject lot (which is typically approximately 4.5 ft, above the crown of the road) is an average of 6' above the crown of the road. Thus, the Borough's 35-foot height requirement is still measured from the crown of the road, notwithstanding that the finished floor of the proposed home will be located above the same.
- As indicated, and as referenced above, the natural grade of the lot is an average of 6' feet above the crown of the road. Towards that end, the Board finds that the elevation of the natural grade of the lot materially limits / restricts the ability of the Applicants to satisfy the Borough's Prevailing Height Requirements (in an aesthetically pleasing / functional fashion).
- The testimony indicated that the level of the road is approximately 6' below the existing ground level.
- As referenced, because the natural elevation of the grade of the subject property slopes, any structures (i.e. home and garage) to be constructed thereon will be approximately 6' higher than the crown of road.
- The said situation (as referenced above) is a rather unique situation – and, per the testimony and evidence presented, the said situation affects a smaller number of homes in the Borough of Sea Girt.
- The nature of the existing topography essentially constitutes a hardship within the meaning of the New Jersey Municipal Land Use law.
- The rationale for the height relief (i.e. natural grade of the lot) applies to both the non-conforming home and the non-conforming garage.
- The Board Members reviewed an extensive amount of testimony / information / documentation / pictures of other homes in the immediate area. Based upon the same, and per the testimony and evidence presented, the Board finds that the height of the new home is consistent with the heights of other homes on adjacent / nearby properties.
- The Application as initially submitted requested variance approval for a number of variances, including an Impervious Coverage

Variance, a Fence Variance and a Window Well Variance. However, prior the continued Hearing, the Applicants' representatives modified the proposal so as to eliminate the aforesaid variances.

- In conjunction with the above point, the Board is aware that the Application, as ultimately modified, only requires new approval for the Variance for the height of the home, the height of the garage, and the side yard setback.
- The Board finds that the elimination of some of the initially requested variances (as referenced above) substantially improves the overall merit / acceptability of the Application.
- The proposed single-family use is a permitted use in the subject zone.
- The proposed detached garage use is a permitted accessory use in the subject zone as well.
- The proposed pool is a permitted accessory use in the zone.
- The topographical features referenced herein justify granting the Variance relief for the height of the garage as well.
- The location of the proposed home / garage is practical and appropriate.
- The home approved herein will be consistent with the street scape of the immediate area.
- The use of the land approved herein is, in fact, an appropriate use of the land.
- Subject to the conditions contained herein, the home approved herein has been appropriately scaled, and the same will not be inconsistent with the character of the neighborhood.
- The garage approved herein is not out of scale with the neighborhood.
- As initially presented, the Application required approval for the location / setback of certain window wells. Respectfully, sufficient evidence was not presented to justify such Variance relief. The Applicants have subsequently agreed to revise their Plans so as to eliminate the non-conforming elements associated with the window

wells. The Board appreciates the Applicants' concession in the said regard.

- The natural elevation of the Lot materially limits the ability of the Applicants to satisfy the requisite Height Requirements in an aesthetically pleasing fashion.
- The Board Members reviewed the height of other homes in the area – including the heights of homes on adjoining properties, as well as other homes in the area. After such a review and analysis, the Board is of the opinion that the height approved herein will not be out of character with the neighborhood / area.
- The Board acknowledges that the height of the home is a direct function of the unique topography of the land.
- The Board finds that the non-conforming height approved herein meets the general intent of the Ordinance which is, among other things, to ensure that only an appropriately scaled structure will be constructed on the site.
- The subject property is adjacent to a 15 ft. wide unpaved alley way (along the eastern property line). The said alley way is not regularly accessed by the public, and the alley way essentially only serves 2 or 3 adjacent properties. Notwithstanding, the existence of the alley way created certain questions relative to the proposal, including such items as:
 - a. Is the alley way to be considered a road / street, for purposes of establishing the referenced Side Yard Setback?
 - b. Is the subject property a corner Lot (in that it is not intersected by 2 public streets, but rather, by a street and an alley way), which will, in turn, change Setbacks or impose different Setback calculations, etc.

There was extensive discussion on the issue, and an analysis of prior Board / Borough / Zoning Officer determinations in the said regard. The Board Members will presumably review the matter in greater detail at an upcoming annual study meeting, at which time, the formal thought / opinions / testimony of the Board Engineer, and the Zoning Officer can be obtained in a more thorough and comprehensive fashion. That notwithstanding, the aforesaid circumstances may result in the need for a Side Yard Setback

Variance for the firepit (15 ft. required; whereas 12 ft. proposed). Out of an abundance of caution, and to the extent necessary, the Board has decided to grant the aforesaid Variance, to the extent the same is even necessary.

- Notwithstanding the Side Yard Setback Variance granted herein (to the extent necessary), the Board acknowledges that the alley way is not a traditional public roadway, thereby further justifying the Variance relief.
- The subject alley way represents a rather unique situation, which does not affect many other properties within the Borough of Sea Girt.
- The Firepit Setback Variance granted herein (i.e. Setback from the alley way) will not compromise the interests of the public.
- The Firepit Setback Variance granted herein will not adversely affect the public (in that the alley is not traditionally utilized by members of the public).
- As a result of the unique situation relative to the alley way, the Side Yard Setback Variance (for the firepit) can be granted without compromising the aesthetic interests of the site or the neighborhood.
- The unique features associated with the subject property and the adjacent alley way compromise the ability of the Applicants to satisfy the Prevailing Setback Requirements in the within situation.
- The Application as presented requires a Lot Depth Variance. Specifically, 150 ft. is required; whereas 130 ft. exists, which is an existing condition. The Board recognizes that the said condition is not being exacerbated as a result of the within approval.
- Per the testimony and evidence presented by the Applicants' professionals, there is no adjacent land to acquire which could help eliminate and / or reduce the nature / extent of the Lot Depth Variance.
- The Application as presented requires a potential Variance for the fence height. Specifically, under the Prevailing Zoning Regulations, a maximum fence height allowed is 6 ft. In the within situation, the Applicants are proposing a 4 ft. fence on top of a 3 ft. retaining wall. Thus, there was a fairly intense discussion as to whether or not the said fence height complied with the Borough's Prevailing Zoning Regulations, and 6 ft. height limitation. That is, there was,

essentially, a discussion as to whether the said situation required Variance relief. To the extent necessary, and to avoid any future problems / issues, the Board has decided to grant the said Variance, to the extent the same is necessary.

- The Board finds that the said fence / retaining wall situation will not compromise the interests of the public.
- The Board is aware that with the pool, a compliant fence is required – and the Board Members fear that a smaller fence (which would technically comply with all of the Borough's Prevailing Zoning Regulations) would potentially compromise public safety.
- The unique situation (relative to the fence being located on top of the retaining wall) justifies the Variance relief, particularly in light of the health and safety benefits associated therewith.
- The proposed pool complies with all Prevailing Bulk Requirements.
- Per the Borough's Prevailing Zoning Regulations, the pool equipment / mechanical area will be located in a Zoning-compliant location.
- The construction of an appropriately designed single-family home on the Lot will substantially improve the aesthetic appearance of the currently vacant Lot.
- The Board is not typically inclined to grant Height Variances. Thus, Board Members engaged in a good faith debate as to the overall merits of the proposal. After reviewing the testimony / evidence presented, after considering the unique topography of the property, after reviewing the architectural renderings, and after analyzing the other testimony / information presented, the Board has decided that the benefits of approving the within Application out-weigh the detriments associated therewith.
- The location of the proposed home is practical and appropriate.
- The size of the proposed home is appropriate, particularly given the conforming size of the existing Lot.
- The Board notes that the subject Lot is a conforming Lot (in terms of Lot Area.) In fact, the minimum Lot size in the Zone is 7,500 SF; whereas the subject Lot has a conforming area of 7,800 SF.
- Subject to the conditions contained herein, the home approved herein will not overpower / overwhelm the subject Lot.

- The home approved herein will not overpower / dwarf other homes in the area – particularly in light of the nature of the surrounding residential uses.
- The home approved herein represents an attractive and upscale home, in accordance with Prevailing Community Standards.
- The site will provide a sufficient amount of off-street parking spaces for the Applicants' use and thus, no Parking Variance is required.
- The existence of sufficient and appropriate parking is of material importance to the Board – and but for the same, the within Application may not have been approved.
- Sufficiently detailed testimony / plans were represented to the Board.
- The proposed home should nicely complement the property and the neighborhood.
- Additionally, the architectural/aesthetic benefits associated with the proposal outweigh the detriments associated with the Applicants' inability to comply with all of the specified standards.
- The architectural design of the proposed home will not be inconsistent with the architectural character of other single-family homes in the area.
- Subject to the conditions set forth herein, the 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 constructed herein will not be inconsistent with other improvements located within the Borough.
- Approval of the within application will promote various purposes of the Municipal Land Use Law; specifically, the same will provide a desirable visual environment through creative development techniques.

- The Application as presented satisfies the Statutory Requirements of N.J.S.A. 40:55D-70(c) (Bulk Variances).

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

CONDITIONS

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

- a. The Applicants shall comply with all promises, commitments, and representations made at or during the Public Hearing Process.
- b. The Applicants shall comply with the terms and conditions of the Leon S. Avakian, Inc. Review Memorandum, dated July 1, 2020, last revised November 4, 2020 (A-16).
- c. The Applicants shall cause the Plans to be revised so as to portray and confirm the following:
 - The inclusion of a note confirming that the roof pitch shall comply with Prevailing Borough Regulations.
 - The inclusion of a note confirming that the Applicants shall install deep drywells in compliance with the Borough Ordinance, the details of which shall be reviewed and approved by the Board Engineer.
 - The inclusion of a note confirming that the Applicants shall arrange for trench drains and 2 recharge systems to be placed on the site, the details of which shall be reviewed and approved by the Board Engineer.
 - The inclusion of a note confirming that the Applicants shall comply with the Borough's Prevailing Curb-cut Requirements.

- The inclusion of a note confirming that the cabana shall not be utilized as habitable living space.
 - The inclusion of a note confirming that the pool lighting scheme shall comply with the Prevailing Borough Design Requirements.
 - The inclusion of a note confirming that the proposal shall comply with Prevailing Lot Coverage / Impervious Coverage Requirements (as no such Variance is granted).
 - The inclusion of a note confirming that any window wells shall comply with Prevailing Zoning Regulations (as no such Variance relief is granted herein).
 - The inclusion of a note, if necessary, confirming that the cellar is to be utilized for storage only, and that the conventional stair access has been removed and replaced by an access hatch in the floor.
 - The inclusion of a note confirming that the front yard pergola has been eliminated from the approved project.
 - The inclusion of a note confirming that the Applicants shall not interfere with the existing alley way.
- d. The Applicants shall obtain any and all necessary demolition Permits as the Borough of Sea Girt may require.
- e. The Applicants' Attorney shall arrange for copies of A-7, A-8, A-9, A-10, and A-17 to be presented to the Board Secretary.
- f. The Board notes that the retaining wall may straddle the property line. For record-keeping purposes, the Applicants acknowledge that the Sea Girt Planning Board has no authority to grant / authorize the creation / maintenance of any structure on a Lot belonging to another. Additionally, the creation / continuation of a retaining wall straddling a property line creates certain ownership / use / maintenance / liability / legal / insurance issues – and the Applicants are respectfully encouraged to communicate with their Real Estate Representatives / Legal Representatives relative to the same.

The Applicants are also encouraged to communicate with the affected property owner relative to the said condition as well, as the Planning Board retains no jurisdiction over the said issue.

- g. The Board recognizes that there is a shared driveway at the site. For record-keeping purposes, and as discussed during the Public Hearing process, the Sea Girt Planning Board has no jurisdiction to allow any deviation or disturbance from any existing Shared Driveway Agreements / Easements between the affected property owners.
- h. Any grade change associated with the subject property shall be specifically reviewed and approved by the Board Engineer.
- i. Revised Plans (3 sets), as referenced herein, shall be submitted to the Board Secretary.
- j. The revised Plans referenced and discussed at the November 18, 2020 meeting were not reviewed by the Office of the Board Engineer. As such, the within approval is contingent upon the Board Engineer reviewing the revised Plans, as approved herein.
- k. The Applicants shall comply with any Prevailing FEMA Regulations.
- l. The Applicants shall comply with all Prevailing Affordable Housing Regulations / direction / contributions, which may be required by the United States of America, the State of New Jersey, the Borough of Sea Girt, the Court System, C.O.A.H., and any other Agency having jurisdiction over the matter.
- m. The pool shall comply with all Prevailing Bulk Requirements, as no Pool Variance is granted herein.
- n. In conjunction with the above point, the pool lighting shall comply with the Borough's Prevailing Ordinance Requirements as well.
- o. Additionally, to the extent updated / additional CAFRA approval is required (in conjunction with the within approval), the Applicants shall obtain the same and shall provide the Board Secretary / Board Engineer with proof thereof.
- p. The Applicants shall obtain any necessary pool permit as may be required.

- q. The Applicants shall utilize good faith efforts to protect any existing street trees at the site.
- r. The Applicants shall appropriately manage storm-water run-off during and after construction (in addition to any other Prevailing / applicable Requirements / obligations).
- s. The Applicants shall obtain any applicable permits/approvals and pay any applicable charges as may be required by the Borough of Sea Girt (or other Agency having jurisdiction over the matter) - including, but not limited to, the following:
 - Building Permit
 - Plumbing Permit
 - Electrical Permit
 - Sewer Connection Fees
- t. If applicable, the proposed structure shall comply with applicable Provisions of the Americans with Disabilities Act.
- u. 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.
- v. 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.
- w. 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.
- x. 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, the Manasquan River Regional Sewerage Authority, and the Freehold Soil Conservation District.
- y. The Applicants shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.

- z. If required by the Board / Borough Engineer, the Applicants shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.

- aa. Unless otherwise agreed by the Zoning Board, the within approval shall be deemed abandoned, unless, within 24 months from adoption of the within Resolution, the Applicants obtain a Certificate of Occupancy for the construction / development approved herein.

- bb. **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 Applicants are advised that there can be no deviation from the Plans approved herein, except those conditions specifically set forth or otherwise referenced herein. In the event post-approval conditions at the site are different than what was presented to the Board, or different from what was otherwise known, or in the event post-approval conditions are not necessarily structurally sound, the Applicants and their 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, Applicants and their 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, will compromise the Applicants' approval, will compromise the Applicants' building process, will create uncertainty, will create stress, will delay construction, will potentially void the Board Approval, and the same will result in the Applicants incurring additional legal / engineering / architectural costs. Applicants are 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, Applicants are**

to be mindful that the Applicants are ultimately responsible for the actions of the Applicants', their Agents, their representatives, their employees, their contractors, their engineers, their architects, their builders, their lawyers, and other 3rd parties.

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 mis-representations or actions by the Applicants' representatives 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.

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

AGAINST THE APPLICATION: Jake Casey, John Ward

NOT ELIGIBLE TO VOTE: Carla Abrahamson, Stan Koreyva

The foregoing Resolution was offered by Mrs. Brisben, seconded by Mayor Farrell and adopted by Roll Call Vote:

IN FAVOR: Councilwoman Diane Anthony, Karen Brisben, Mayor Ken Farrell, Eileen Laszlo, Ray Petronko, Robert Walker, Norman Hall

OPPOSED: None

ABSTAINED: None

INELIGIBLE TO VOTE: Carla Abrahamson, Jake Casey, Stan Koreyva, John Ward

ABSENT: None

The Board then considered approval of a Resolution for Block 14, Lot 16, 105 Ocean Avenue, owned by Michael & Patricia Pope, to allow construction of a new home.

Mr. Michael Rubino, Esq., the applicants' attorney, had written a letter asking for a few changes to the Resolution and attorney Linda Lee, filling for Mr. Rubino, was in the audience and asked for a C-1 reference in the Resolution due to hardship in regards to the topography; Mr. Kennedy said this was no problem and it was spoken of on page 7 of the Resolution, he will reword it to reference the C-1 criteria. Mr. Ward had a question on the wording on the Board Engineer reviewing revised plans within 30 days and can this be done? Mr. Pope, the applicant who was also in the audience, said the plans will be done and asked for 30 days-60 days for review. As all was agreeable to the Board the following was then presented for approval:

WHEREAS, Michael Pope and Patricia Ruemmler-Pope have made Application to the Sea Girt Planning Board for the property designated as Block 14, Lot 16, commonly known as 105 Ocean Avenue, Sea Girt, New Jersey, within the Borough's District 1, East Single-Family Zone, for the following approval: Use / "d" Variance Approval and Bulk Variance Approval associated with a request to construct a new single-family home, detached garage, in-ground pool, and cabana; and

PUBLIC HEARINGS

WHEREAS, the Board held a remote Public Hearings on October 21, 2020 and November 11, 2020, 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:

- *Zoning Application Package, introduced into Evidence as A-1;*
- *Plot Plan, prepared by WSB Engineering Group, P.A., dated July 15, 2020, last revised July 22, 2020, introduced into Evidence as A-2;*
- *Architectural Plan, prepared by CJ Aker,, dated June 26, 2020, last revised July 22, 2020, introduced into Evidence as A-3;*
- *Survey, prepared by WSB Engineering Group, R.A.,, dated May 20, 2020, introduced into Evidence as A-4;*
- *Review Memorandum from Leon S. Avakian, Inc., dated October 2, 2020, introduced into Evidence as A-5;*
- *Picture of the subject property, taken by the Applicants' Planner on or about October 20, 2020, introduced into Evidence as A-6;*
- *Picture of the home located adjacent to the development site, taken by the Applicants' Planner, dated on or about October 20, 2020, introduced into Evidence as A-7;*
- *A picture of the home located at 107 Ocean Avenue, introduced into Evidence as A-8;*
- *Document reflecting the maximum ridge heights of the subject property and the immediately adjacent property, prepared by CJ Aker, dated October 21, 2020, introduced into Evidence as A-9;*

- *Resolution of the Sea Girt Planning Board (regarding 103 Ocean Avenue), dated March 15, 2020, introduced into Evidence as A-10;*
- *Pictures / diagram / aerial view of the rear area of the subject property, taken from Google Earth, introduced into Evidence as A-11;*
- *Picture of the existing retaining wall on the southern side of the subject property, taken by the Applicants, on or about October 20, 2020, introduced into Evidence as A-12;*
- *Architectural Plan, prepared by CJ Aker, last revised October 21, 2020, introduced into Evidence as A-13;*
- *Affidavit of Service;*
- *Affidavit of Publication.*

WITNESSES

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

- CJ Aker, Architect;
- Michael Pope, Applicant;
- Frank Baer, Engineer / Planner;
- Andrew Janiw, Professional Planner;
- Michael Rubino, Esq., appearing;

TESTIMONY AND EVIDENCE PRESENTED BY THE APPLICANTS'

REPRESENTATIVES

WHEREAS, testimony and other evidence presented by the Applicants' and / or their representatives revealed the following:

- The Applicants are the Owners of the subject property.
- A single-family home previously existed on the subject property.

- The previously existing home has been demolished.
- The subject property is currently vacant.
- There is a shared driveway at the site (for the benefit of the Applicants and the immediately adjacent neighbor).
- The Applicants propose to construct a 2 ½ story single-family home on the site, with a detached garage, cabana, and swimming pool.
- The newly constructed home will include the following:

Basement Level

Living Room
Bathroom
Bedroom
Mechanical Room
Storage Room
Unidentified (illegible)

First Floor

Dining Room
Den / Study
Kitchen
Pantry
Living Room
Bathroom
Covered Porch
Outdoor Kitchen

Second Floor

Bedroom
Bedroom
Bedroom
Bedroom
Laundry Room
Bathroom
Bathroom
Covered Balcony

Top Half Story

Storage Area
Bathroom

- Details pertaining to the proposed garage include the following:

Type:	Detached
Size:	Approximately 479 SF (per Plans)
Location:	Rear of property

- Details pertaining to the proposed pool include the following:

Type of pool:	In-ground
Size:	Approximately 266 SF (per Plans)
Location:	Behind home (between home and garage) (per Plans)

- Details pertaining to the proposed cabana include the following:

Location:	Immediately in front of the garage (near the pool) (per Plans)
Size:	Approximately 20 ft. X approximately 6.25 ft.
Features:	The cabana will include a bathroom and a shower.

- The Applicants anticipate having the construction completed in the near future.
- The Applicants will be utilizing licensed contractors in connection with the construction / development process.

VARIANCES

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

FRONT YARD SETBACK: 25.88 ft. required; whereas 22.8 ft. proposed;

GARAGE HEIGHT: Maximum 16 ft. allowed; whereas 22.2 ft. proposed;

PRINCIPAL BUILDING HEIGHT: Maximum 35 ft. allowed; whereas 40.61 ft. proposed;

PUBLIC COMMENTS

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

- Rick D'Emilia
- John Eknoian
- Kathrine Metcalfe

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 **granted with conditions**.

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

1. The Sea Girt Planning Board has proper jurisdiction to hear the within matter.
2. The subject property is located at 105 Ocean Avenue, Sea Girt, New Jersey, within the Borough's District 1 East, Single-Family Zone.
3. The subject property is currently vacant and undeveloped.
4. The Applicants propose to construct a single-family home, detached garage, cabana, and pool.
5. Details pertaining to the proposed single-family home (and garage / pool / cabana) are set forth elsewhere herein (and in the submitted Plans).
6. Such a proposal requires approval for a Use Variance and Bulk Variance relief.

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

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

- The proposed single-family use is a permitted use in the subject Zone.
- The Application as presented requires Variances for the height of the proposed single-family home and the height of the proposed detached garage (other Bulk Variance relief is required as well).
- The Borough of Sea Girt Essentially requires structures to be measured from the crown of the road.
- In the within situation, the natural grade of the subject lot (which is typically approximately 1 foot above the crown of the road) is an average of 6' 6" above the crown of the road. Thus, the Borough's 35-foot height requirement is still measured from the crown of the road, notwithstanding that the finished floor of the proposed home will be located above the same.
- As indicated, and as referenced above, the natural grade of the lot is an average of 6' 6" feet above the crown of the road. Towards that end, the Board finds that the elevation of the natural grade of the lot materially limits / restricts the ability of the Applicants to satisfy the Borough's Prevailing Height Requirements (in an aesthetically pleasing / functional fashion).
- The testimony indicated that the level of the road is approximately 6' 6" below the existing ground level.
- As referenced, because the natural elevation of the grade of the subject property slopes, any structures (i.e. home and garage) to be constructed thereon will be approximately 6' 6" higher than the crown of road.
- The said situation (as referenced above) is a rather unique situation – and, per the testimony and evidence presented, the said situation affects only a small number of homes in the Borough of Sea Girt.

- The nature of the existing topography essentially constitutes a hardship within the meaning of the New Jersey Municipal Land Use law.
- Some of the Board Members essentially inquired as to whether the home could be redesigned so as to comply with the Borough's overall height requirements. In response, the Applicants' representatives essentially suggested that while it would be physically possible to adjust / eliminate / reduce the roof pitches / roof lines / eave lines, doing so would materially compromise the overall aesthetic appeal of the new home. The Board accepts the said rationale.
- Per the testimony and evidence presented, the installation of a height-complying flat roof, or a relatively flat roof, would not be practical, functional, nor aesthetically pleasing.
- The Applicants' representatives testified that the subject home has been designed so as to physically appear as if the same will have a conforming height of approximately 34.01 feet (above grade). In light of the same, and for the other reasons set forth herein, the Board is of the opinion that the home approved herein will not appear dramatically different / larger / taller than other homes in the immediate area.
- Per the testimony presented, the home approved herein will not be taller than the homes in the immediately surrounding area.
- Because of the natural grade of the lot, and the fact that the home / garage will sit 6' 6" above the crown of the road, the height of the structures approved herein will not overpower the lot.
- The rationale for the height relief (i.e. natural grade of the lot) applies to both the non-conforming home and the non-conforming garage.
- Per the Applicants' representatives, because of the natural / existing topography of the land, a height-conforming home would necessarily require a low-pitched roof, or a flat roof, which would not be in keeping with the design and the aesthetic appearance of other homes in the area.
- Per the testimony and evidence presented, the Board is aware that the actual home approved herein will not be greater than 35 feet tall.

- The Board Members reviewed an extensive amount of testimony / information / documentation / pictures of other homes in the immediate area. Based upon the same, and per the testimony and evidence presented, the Board finds that the height of the new home is consistent with the heights of other homes on adjacent / nearby properties.
- Per the testimony and evidence presented, the Board is aware that the home has been designed so as to have the minimal height required to support a typical floor configuration.
- In conjunction with the above point, the Board notes that although a Height Variance is required, the first floor will be 9 ft., the second floor will be 8 ft., and the top half story will be 8 ft.
- In its review of the Height Variance, the Board is aware that the home at 103 Ocean Avenue has a height of 41.9 ft.; whereas the home at 107 Ocean Avenue has a height of 39.6 ft. Per the within, the average height of the neighboring homes is 40.7 ft. (which is taller than the home approved herein).
- The Board is also aware that if the requested Height Variance were not approved herein, then, in that event, the home approved herein would likely have lower than typical / standard ceiling heights (which would not be beneficial).
- The Board is also aware that if the Height Variance relief as required herein were not granted, then, in that event, the home would have a flatter than typical roof pitch, which, might compromise the overall aesthetic appeal of the structure.
- If the Height Variance relief requested herein were not granted, the Board is aware that the overall aesthetic appeal and functionality of the to-be-constructed home could be compromised.
- The Board is also aware that the Height Variance granted herein is not associated with the Applicants' desire for increased living space, etc. Rather, as indicated, the Height Variance is directly associated with the natural grade at the site.
- The natural elevation of the Lot materially limits the ability of the Applicants to satisfy the requisite Height Requirements in an aesthetically pleasing fashion.
- As referenced, the natural grade of the property is above the curb, which compromises the ability of the Applicant to comply with the 35-foot Height Requirement.

- The nature of the existing topography essentially constitutes a hardship, within the meaning of the New Jersey Municipal Land Use Law.
- The Board Members reviewed the height of other homes in the area – including the heights of homes on adjoining properties, as well as other homes in the area. After such a review and analysis, the Board is of the opinion that the height approved herein will not be out of character with the neighborhood / area.
- The Board acknowledges that the height of the home is a direct function of the unique topography of the land.
- While the home approved herein will technically have a height of 40.61 ft. (measured from the crown of the road), the Board notes that the actual home itself will not be over 35 ft. (As indicated, the height deviation stems from the natural elevation of the existing Lot.)
- The Board finds that the non-conforming height approved herein meets the general intent of the Ordinance which is, among other things, to ensure that only an appropriately scaled structure will be constructed on a particular site.
- The Board is aware that the garage height requires Variance relief as well. The Board is aware that the ridge of the proposed garage (22.2 ft. is roughly the same as the height of the neighboring garage (22.86 ft.).
- The Application as presented requires a Front Yard Setback Variance. Specifically, a 25.88 ft. Front Yard Setback is required; whereas only 22.8 ft. is proposed.
- Per the extensive testimony and evidence presented, the Board finds that the proposed Front Setback approved herein is in line with the neighboring properties.
- Per the testimony and evidence presented, the Board is aware that the average setback of all Block 14 properties is 22.8 ft., which is the Front Setback approved herein.
- The Board is also aware that if the Front Yard Setback Variance were not granted, then, in that event, the to-be-constructed home could have a somewhat obstructed water view.

- The Board is also aware that if the Front Setback were extended any further, the same could potentially limit the amount of useable / functional backyard space (which is already limited or compromised because of the shared driveway, etc.).
- The Board is also aware that the Front Yard Setback approved herein will allow the garage / driveway to be constructed with sufficient space to enable a K-turn vehicular maneuvers, which will allow drivers to avoid having to back-out onto Ocean Avenue.
- In conjunction with the above point, the Front Setback approved herein, with the additional garage / driveway space, will result in a safer method by which Owners and Guests can enter / exit the property (without having to back-out onto busy Ocean Avenue).
- The Application as initially submitted requested variance approval for a number of variances, including an Impervious Coverage Variance, a Fence Variance and a Window Well Variance. However, prior the continued Hearing, the Applicants' representatives modified the proposal so as to eliminate some of the aforesaid Variances.
- In conjunction with the above point, the Board is aware that the Application, as ultimately modified, only requires approval for the variance for the height of the home, the height of the garage, and the front yard setback.
- The Board finds that the elimination of some of the initially requested Variances (as referenced above) substantially improves the overall merit / acceptability of the Application.
- The proposed single-family use is a permitted use in the subject zone.
- The proposed detached garage use is a permitted accessory use in the subject zone as well.
- The proposed pool is a permitted accessory use in the zone.
- The topographical features referenced herein justify granting the Variance relief for the height of the garage as well.
- The location of the proposed home / garage is practical and appropriate.

- The home approved herein will be consistent with the street-scape of the immediate area.
- The use of the land approved herein is, in fact, an appropriate use of the land.
- The home approved herein has been appropriately scaled, and the same will not be inconsistent with the character of the neighborhood.
- The garage approved herein is not out of scale with the neighborhood.
- A neighboring property owner attended the Public Hearing and expressed concerns regarding the non-conforming height and / or location of the proposed garage. Specifically, there was a concern that the Applicants' non-conforming garage could have a tremendously adverse impact on the neighbor's property. As a result of the Land Use Board process, the Applicants have agreed to place additional landscaping at the rear of the garage, so as to shield the neighbor's home. (The Applicants have also agreed to perpetually maintain / replace / replant the landscaping, as necessary.) The Board finds that the aforesaid shielding / landscaping shall significantly reduce any adverse impacts otherwise associated with the non-conforming garage.
- Subject to the conditions set forth herein, and subject to the further concurrence of the Board Engineer, based upon the testimony and evidence presented, the Board finds that the grade change approved herein can be effectuated without causing substantial detriment to the public good.
- During the Public Hearing process, there was a significant discussion regarding the retaining wall, and the fence to be located on top of the same. Upon further review, the Applicants have agreed to remove the fence so that the same is not on top of the retaining wall. Because the fence will now be located on the ground (and not on the retaining wall), based upon the testimony and evidence presented, the Board finds that a Variance for the said issue is not required.
- The Application as initially presented required an Impervious Coverage Variance. Respectfully, sufficient testimony / information was not presented for the granting of such relief. After further review, the Applicants have arranged for the Plans to be revised so

as to propose a conforming Impervious Coverage of 34.8%. The Board finds that a conforming Impervious Coverage is appropriate.

- The Board appreciates the Applicants' concession to provide a conforming Impervious Coverage.
- As initially presented, the Application required approval for the location of certain window wells. Respectfully, sufficient evidence was not presented to justify such Variance relief. The Applicants have subsequently agreed to revise their Plans so as to element any non-conforming elements associated with the window wells. (In fact, the window well Variance request was withdrawn.) The Board appreciates the Applicants' concession in the said regard.
- As indicated, the pool fence will be located entirely on the ground level (as opposed to being placed on top of the retaining wall).
- The pool fence approved herein will be mostly hidden behind the existing / to-be-constructed accessory structures.
- The pool fence will be of an open design and suitably landscaped so as to minimize any adverse visual impact.
- The proposed pool complies with all Prevailing Bulk Requirements.
- Per the Borough's Prevailing Zoning Regulations, the pool equipment / mechanical area will be located in a rear yard area.
- The construction of an appropriately designed single-family home on the Lot will substantially improve the aesthetic appearance of the currently vacant Lot.
- The Board is not typically inclined to grant Height Variances. Thus, Board Members engaged in a good faith debate as to the overall merits of the proposal. After reviewing the testimony / evidence presented, after considering the unique topography of the property, the difference in grade, and the crown of the road where the home is to be built, after reviewing the architectural renderings, and after analyzing the other testimony / information presented, the Board has decided that there is a recognized hardship and that the benefits of approving the within Application out-weigh the detriments associated therewith.
- The location of the proposed home is practical and appropriate.

- The size of the proposed home is appropriate, particularly given the conforming size of the existing Lot.
- The Board notes that the subject Lot is a conforming Lot (in terms of Lot Area.) (The minimum Lot size in the Zone is 7,500 SF; whereas the subject Lot has a conforming area of 7,500 SF.)
- Subject to the conditions contained herein, the home approved herein will not overpower / overwhelm the subject Lot.
- The home approved herein will not overpower / dwarf other homes in the area – particularly in light of the nature of the surrounding residential uses.
- The home approved herein represents an attractive and upscale home, in accordance with Prevailing Community Standards.
- The site will provide a sufficient amount of off-street parking spaces for the Applicants' use and thus, no Parking Variance is required.
- The existence of sufficient and appropriate parking is of material importance to the Board – and but for the same, the within Application may not have been approved.
- Sufficiently detailed testimony / plans were represented to the Board.
- The proposed home should nicely complement the property and the neighborhood.
- Additionally, the architectural/aesthetic benefits associated with the proposal outweigh the detriments associated with the Applicants' inability to comply with all of the specified standards.
- The architectural design of the proposed home will not be inconsistent with the architectural character of other single-family homes in the area.
- Subject to the conditions set forth herein, the 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 constructed herein will not be inconsistent with other improvements located within the Borough.
- 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) and (d).

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

CONDITIONS

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

- a. The Applicants shall comply with all promises, commitments, and representations made at or during the Public Hearing Process.
- b. The Applicants shall comply with the terms and conditions of the Leon S. Avakian, Inc. Review Memorandum, dated October 2, 2020 (A-5).
- c. The Applicants shall cause the Plans to be revised so as to portray and confirm the following:
 - The inclusion of a note confirming that the roof pitch shall comply with Prevailing Borough Regulations.
 - The inclusion of a note confirming that the pool fence shall comply with Prevailing Regulations.
 - The inclusion of a note confirming that the pool lighting shall comply with Prevailing Borough Standards.

- The inclusion of a note confirming that the air conditioning condensers shall be relocated to the northern side of the ridge, in front of the garage (so as to more appropriately / completely conceal / hide / camouflage the proposed garage from the neighboring property owner).
 - The inclusion of a note confirming that the landscaping at the site (which shields the proposed garage) shall be perpetually maintained / replaced / replanted, as necessary.
 - The inclusion of a note confirming that any window wells shall comply with Prevailing Borough Standards, as no Variance relief is granted herein.
 - The inclusion of a note confirming that the proposal shall comply with Prevailing Borough Impervious Coverage Standards, as no such Variance is required.
 - The inclusion of a note confirming that, unless otherwise waived by the Board Engineer, the grading between the Right-of-Way and the fence shall be level, so as to honor the spirit and intent of the Borough's Prevailing 4 ft. Fence Requirements.
 - The inclusion of a note confirming that the cabana shall not be utilized as habitable living space.
 - The inclusion of a note confirming that the fence shall be removed from the top of the retaining wall. (Rather, the fence shall be installed on grade.)
 - The inclusion of a note confirming that the retaining wall shall be relocated approximately 4 ft. to the south.
- d. The Board recognizes that there is a shared driveway at the site. For record-keeping purposes, and as discussed during the Public Hearing process, the Sea Girt Planning Board has no jurisdiction to allow any deviation or disturbance from any existing Shared Driveway Agreements / Easements between the affected property owners.

- e. Any grade change associated with the subject property shall be specifically reviewed and approved by the Board Engineer.
- f. Revised Plans (3 sets), as referenced herein, shall be submitted to the Board Secretary.
- g. The revised Plans referenced and discussed at the November 18, 2020 meeting were not reviewed by the Office of the Board Engineer. As such, the within approval is contingent upon the Board Engineer reviewing the revised Plans, as approved herein. (The said Plans shall be reviewed / approved as soon as possible, i.e. within 60 days hereof.)
- h. The retaining wall appears to be located on the subject property line. Obviously, the Sea Girt Planning Board has no authority to authorize the placement of any structure on any adjacent property owned by another. As such, the Applicants are encouraged to more formally review the matter with their own Attorneys / Real Estate Representatives, etc. Additionally, the Board notes that the placement of the retaining wall on the property line can create certain ownership / maintenance / use / liability / legal issues – and the Applicants are respectfully encouraged to negotiate / address such issues with the affected property owner, as the Sea Girt Planning Board does not retain jurisdiction over the said matter.
- i. The Applicants shall comply with any Prevailing FEMA Regulations.
- j. The Applicants shall comply with all Prevailing Affordable Housing Regulations / direction / contributions, which may be required by the United States of America, the State of New Jersey, the Borough of Sea Girt, the Court System, C.O.A.H., and any other Agency having jurisdiction over the matter.
- k. The pool shall comply with all Prevailing Bulk Requirements, as no Pool Variance is granted herein.
- l. In conjunction with the above point, the pool lighting shall comply with the Borough's Prevailing Ordinance Requirements as well.
- m. Additionally, to the extent any CAFRA approval is required (in conjunction with the within approval), the Applicants shall obtain the same and shall provide the Board Secretary / Board Engineer with proof thereof.

- n. The Applicants shall obtain any necessary pool permit as may be required.
- o. The Applicants shall utilize good faith efforts to protect any existing street trees at the site.
- p. The Applicants shall appropriately manage storm-water run-off during and after construction (in addition to any other Prevailing / applicable Requirements / obligations).
- q. The Applicants shall obtain any applicable permits/approvals and pay any applicable charges as may be required by the Borough of Sea Girt (or other Agency having jurisdiction over the matter) - including, but not limited to, the following:
 - Building Permit
 - Plumbing Permit
 - Electrical Permit
 - Sewer Connection Fees
- r. If applicable, the proposed structure shall comply with applicable Provisions of the Americans with Disabilities Act.
- s. 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.
- t. 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.
- u. 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.
- v. 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, the Manasquan River Regional Sewerage Authority, and the Freehold Soil Conservation District.

- w. The Applicants shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.
- x. If required by the Board / Borough Engineer, the Applicants shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.
- y. Unless otherwise agreed by the Zoning Board, the within approval shall be deemed abandoned, unless, within 24 months from adoption of the within Resolution, the Applicants obtain a Certificate of Occupancy for the construction / development approved herein.
- z. **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 Applicants are advised that there can be no deviation from the Plans approved herein, except those conditions specifically set forth or otherwise referenced herein. In the event post-approval conditions at the site are different than what was presented to the Board, or different from what was otherwise known, or in the event post-approval conditions are not necessarily structurally sound, the Applicants and their 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, Applicants and their 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, will compromise the Applicants' approval, will compromise the Applicants' building process, will create uncertainty, will create stress, will delay construction, will potentially void the Board Approval, and the same will result in the Applicants incurring additional legal / engineering / architectural costs. Applicants are 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, Applicants are to be mindful that the Applicants are ultimately responsible for the actions of the Applicants', their Agents, their representatives, their employees, their contractors, their engineers, their architects, their builders, their lawyers, and other 3rd parties.

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 mis-representations or actions by the Applicants' representatives 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.

FOR THE APPLICATION: Carla Abrahamson, Karen Brisben, Eileen Laszlo, Ray
Petronko, Robert Walker, John Ward, Stan Koreyva,
Norman Hall

AGAINST THE APPLICATION: Jake Casey

The foregoing Resolution was offered by Mr. Ward, seconded by Mrs. Laszlo and adopted by Roll Call Vote:

IN FAVOR: Carla Abrahamson, Karen Brisben, Stan Koreyva, Eileen Laszlo, Ray Petronko, John Ward, Robert Walker, Norman Hall

OPPOSED: None

ABSTAINED: None

INELIGIBLE TO VOTE: Jake Casey

ABSENT: None

OTHER BUSINESS:

The Board then turned to a request for extension of time to perfect a variance application for Block 24, Lot 3, 604 Second Avenue, owned by James & Kristen Davey.

Mr. Kennedy they are requesting extra time to comply with the variance application that was approved awhile ago and the time for completion is almost here, they are asking for an extension of a year which will take them to January 27, 2022. A motion to approve this was made by Mrs. Laszlo, seconded by Mr. Casey and approved by voice vote, all aye.

The other item under Other Business was a discussion on the William Sitar Settlement finalized by Council. Before this started, Mr. Ward recused himself from this discussion as he lives within 200 feet of the property at 501 Washington Boulevard, the property that is the topic of the discussion.

Andrew Bayer, Special Counsel on Affordable Housing, then spoke and explained Mr. Sitar sued the town and Planning Board for a "Builder's Remedy". Sea Girt did not ever file any application with COAH (Council on Affordable Housing) for affordable housing, so there was an opening for Mr. Sitar to file for the "Builder's Remedy" which allowed him to ask for a suspension of the current zoning and provide affordable housing; he originally wanted to construct 42 units but reached a resolution with Council to be able to put in 19 units, 9 on the North side of Washington Blvd. (with 3 of them being affordable housing) and commercial on the first floor; on the South side would be 10 units. Council found this favorable as Mr. Sitar originally wanted to put in 42 units and this way Sea Girt gets 3 affordable housing units. Council approved this at their last meeting and now wants the Planning Board to also approve this settlement. The next step would be a Fairness Hearing through the court and more testimony from Jennifer Beahm, the Sea Girt Planner. If this is approved the Borough then has to re-

zone this area and this action has to be adopted by the Council and Planning Board; the applicant then comes before the Planning Board for final approval of his Site Plan.

Mr. Bayer said he is also working on filing a separate suit to find out what the Borough's affordable housing obligations are so the town is not subject to another Builder's Remedy lawsuit, the Court can give the town protection through 2025 and noted the Housing Element part of the Master Plan will have to be updated. Mr. Kennedy said if the Board is okay with this we can have a Resolution of approval, Council already authorized the settlement. Chairman Hall noted this already has been discussed in the public portion of the Council meeting, the Planning Board now just has to take action.

Mr. Petronko asked Mr. Bayer what is the criteria for "affordable housing" and Mr. Bayer said it will be deed restricted for low-moderate income split, 60% to less than 50% of the median income. Mr. Petronko then asked why the courts are involved if there is a settlement and Mr. Bayer said the Court has the final hearing under the Mount Laurel Housing Law to determine if the settlement is reasonable. Mrs. Laszlo asked if this gets approved, is the town protected to 2025? Mr. Bayer said it would be to July of 2025, then there may be new legislation; this update to the law was put in place in 2015 and is a Constitutional Matter so we do not know what the process will be. Mrs. Laszlo then asked if he can ask the Court if 3 units is enough and Mr. Bayer said there is a "Vacant Land Adjustment" and the Planner will look into this, this case is still early on. Mr. Casey asked if it is typical for a Planning Board to create a Fair Share plan and Mr. Bayer said the mail obligation for this is done through Council.

At this point in time the meeting was "hacked" by unwanted hackers and the meeting was totally disrupted and taken over by them; the meeting had to be closed down and the rest of the business on the agenda could not be done. The meeting was closed down by the Police Chief at approximately 4:45 pm.

Karen S. Brisben, Board Secretary

Approved: February 17, 2021