

SEA GIRT PLANNING/ZONING BOARD  
REGULAR MEETING  
WEDNESDAY, JUNE 15, 2022

The Regular Meeting of the Sea Girt Planning Board was held on Wednesday, June 15, 2022 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. Kevin Kennedy, Board Attorney, Peter Avakian, Board Engineer were also present and Board Secretary Karen Brisben recorded the Minutes.

A Salute to the Flag was done, then the following roll call:

Present: Councilwoman Diane Anthony, Karen Brisben, Tom Britt, Mayor Don Fetzer, Stan Koreyva, Eileen Laszlo, Jake Casey, John Ward, Norman Hall

Absent: Carla Abrahamson, Robert Walker

Chairman Hall announced that this is the last virtual meeting the Planning/Zoning Board will have, starting next month, on July 20<sup>th</sup>, the Board will be going back live at the Sea Girt Elementary School at 7:00 p.m.; he stressed this will be just a live meeting, not a hybrid meeting with virtual attendance. Mr. Kennedy made the announcement that the notice for this Board meeting did have the login information posted and, therefore, this is a lawfully held meeting where the public can participate. Mrs. Brisben gave her email, [kbrisben@seagirtboro.com](mailto:kbrisben@seagirtboro.com) if someone was having a problem logging on. Chairman Hall then wanted to make one more comment, he heard that a potential Planning Board member was told they have to be a Republican to serve and this is totally not true and no one would have to be a Republican or anything else, and he asked that the person/people who are doing this to stop and refrain from this type of statement. The Planning Board members serve as townspeople and not by any political affiliation.

He then asked the public to ask any questions or make any comments on anything other than what is on the docket or pending applications. Councilwoman Anthony wanted to respond to Chairman Hall's comments and she would like to ask the individual who spread this misinformation to please reach out to the Borough Administrator, Jim Gant, and speak to him on this issue; she hoped this would be done so this problem can be taken care of and agreed with Chairman Hall that the Planning Board does not take part in any political affiliation and they are a fair and just Board. Chairman Hall thanked her, as a member of Council, for speaking on this.

There was no public input but Mrs. Laszlo wanted to bring up that she had been approached by many people if the Board can do a hybrid meeting and she knows it is convenient to logon from home, however, she had heard from multiple people that the Council meetings, that are hybrid, are hard to hear online with a poor reception. She

felt if the Board can go hybrid, to be aware of speaking clearly into the microphone. Chairman Hall said he had a discussion on this with Mr. Kennedy, the Board Attorney, and many Boards & Council are going to just live because of a logistics problem. The Board may entertain a call-in number where someone can just listen but can't take part. He wanted to have the first meeting to be completely live and start to go back to normal. Mayor Fetzer felt it was a good thing to allow a call in option as more people can attend a meeting and Chairman Hall said he will speak to Mr. Gant on this and reach a compromise. Mrs. Brisben commented that there is a difference between a Council meeting and a Planning Board meeting, at a Board meeting we have professionals who are showing plans and exhibits and it would be very hard to put those plans up on a screen at a hybrid meeting, Council does not have this issue. Mr. Kennedy agreed with Mrs. Brisben as the Board is a quasi-judicial Board with different functions, to go hybrid will have difficulties and he has seen other towns have problems with this but he will check it out. He also agreed with Mayor Fetzer that more people seem to attend a virtual meeting but there are practical issues and he will look into it.

At this time a motion was made to approve the April 20, 2022 Minutes and Mr. Ward spoke and said he would recuse from commenting or voting as he could not take part of that meeting; Mr. Koreyva made the motion, seconded by Mrs. Laszlo and approved by the Board, all aye with Mr. Ward being recused from voting. Chairman Hall then turned to the approval of the May 18, 2022 Minutes and Mr. Ward commented on the deed restriction for the Shaughnessy property, he did not feel it was reflected properly in the Minutes but Mrs. Brisben said she typed what was discussed and it is in the final Resolution presented by Mr. Kennedy, Mr. Ward wanted the Minutes to be changed to say that Mr. Rubino said they would agree to a deed restriction but Mrs. Brisben noted that Mr. Rubino said they could do a deed restriction. Chairman Hall agreed that the deed restriction is so stated in the final Resolution so it was fine to keep the Minutes. A motion was then made by Mr. Koreyva, seconded by Mr. Britt, to approve the Minutes of May 18, 2022 and this was approved by the Board, all aye.

#### OLD BUSINESS:

The Board turned to the approval of a Resolution for Block 12, Lot 11, 4 Brooklyn Boulevard, owned by Kerry Shaughnessy, to allow height variances and oversized cabana. It was so noted that Councilwoman Anthony had to recuse herself from this application and would not be voting on this matter.

Mr. Kennedy went over the facts of this Resolution: the elimination of the existing rear deck and patio, construction of a new patio, removal of a portion of the existing driveway, renovations to the single-family home, construction of an addition to the single-family home, installation of a swimming pool, installation of a pool deck, conversion of a portion of the existing garage to a cabana. He then summarized the conditions: compliance with the Board Engineer's review letter, revising the plans showing the air conditioner condensers will be on the roof of the garage, compliance with building coverage requirements and air conditioning and mechanical equipment locations requirements, code-compliant fence details, a note that no additional cabana

or accessory structure shall be placed on the site as long as the cabana on the site exists, noise details, screening and parapet wall for the condensers on the garage to be approved by the Board Engineer, compliance with pool lighting requirements, inclusion of a drywell system approved by the Board Engineer, drains to be tied into the roof leaders. He then noted Mr. Ward's concerns and said a Notice of Restriction is in the Resolution and will be filed in the County, also grading/drainage details to be approved by the Board Engineer, maintenance and replacing of the landscaping, complying with the Tree Preservation Ordinance.

Mayor Fetzer just wanted confirmation that the Notice of Restriction does apply to the accessory structure and Mr. Kennedy said it did, he can modify it if the Board wants but it was acceptable to the Board as presented.

The following was then presented for approval:

**WHEREAS**, Richard and Kerry Shaughnessy have made Application to the Sea Girt Planning Board for the property designated as Block 12, Lot 11, commonly known as 4 Brooklyn Boulevard, 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 a number of improvements on a Lot containing a single-family home; and

### **PUBLIC HEARINGS**

**WHEREAS**, the Board held Public Hearings on March 16, 2022 and May 18, 2022, Applicants having filed proper Proof of Service and Publication in accordance with Statutory and Ordinance Requirements; and

### **EVIDENCE / EXHIBITS**

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

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

- *Plot Plan, prepared by InSite Engineering, LLC, dated December 14, 2021, last revised January 26, 2022, introduced into Evidence as A-2;*
- *Architectural Plans, prepared by CJ Aker, dated August 6, 2021, last revised December 20, 2021, consisting of 3 sheets, introduced into Evidence as A-3;*
- *A Boundary and Topographic Survey, prepared by InSite Surveying, LLC, dated April 5, 2021, last revised November 12, 2021, introduced into Evidence as A-4;*
- *Leon S. Avakian Inc. Review Memorandum, dated February 10, 2022, introduced into Evidence as A-5;*
- *Aerial Photograph, introduced into Evidence as A-6;*
- *Photograph of the subject property, introduced into Evidence as A-7;*
- *Memorandum from InSite Engineering, dated January 26, 2022, introduced into Evidence as A-8;*
- *Plot Plan, prepared by InSite Engineering, LLC, dated December 14, 2021, last revised March 30, 2022, introduced into Evidence as A-9;*
- *Architectural Plans, consisting of 3 sheets, prepared by CJ Aker, last revised April 5, 2022, introduced into Evidence as A-10;*
- *Leon S. Avakian Inc. Review Memorandum, last revised May 2, 2022, introduced into Evidence as A-11;*
- *Communication from Michael Rubino, Jr., Esq. to the Board Secretary, dated April 8, 2022, introduced into Evidence as A-12;*
- *Picture of the existing garage, taken by Michael Rubino, Jr. , Esq., taken on or about April 18, 2022, introduced into Evidence as A-13;*
- *Picture of the Applicant's backyard area, taken by Michael Rubino, Jr., Esq., introduced into Evidence as A-14;*
- *Affidavit of Service; and*

- *Affidavit of Publication.*

### **WITNESSES**

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

- CJ Aker, Architect;
- Douglas Clelland, Engineer;
- Andrew Janiw, Professional Planner;
- Kerry Shaughnessy, Applicant;
- Richard Shaughnessy, Applicant;
- Michael Rubino, Jr., Esq. appearing;

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

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

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

- The Applicants are the owners of the subject property.
- There is an existing single-family home located at the site, with a detached garage.
- The Applicants live at the site.
- The existing home is not completely built for the needs for a modern family.
- For instance, the kitchen is outdated, and there is not a completely open layout, etc.
- Additionally, given the nature/location/orientation of the existing structure, the nature of the open rear yard at the site, and the nature of the sun exposure in the existing rear yard area, the rear

of the property is rather hot (and the use of the back yard area is, in turn, compromised).

- In conjunction with the above, and in order to make the home more functional and comfortable, the Applicants propose to effectuate a number of improvements to the existing site.
- The proposed improvements (per the amended Plans) include the following:
  - The elimination / demolition of the existing rear deck / patio (and the replacement / expansion of the same, in an uncovered format);
  - The elimination / removal of a portion of the existing driveway;
  - Proposed renovation of the single-family home;
  - Construction of an addition to the existing single-family home;
  - Installation of a swimming pool;
  - Installation of a pool deck;
  - Conversion of a portion of the existing detached 3 bay garage into a cabana.
- Details pertaining to the proposal include the following:

Addition

Size:	Per Plans
Number of stories:	Per Plans
Height:	Per
Plans	
Location:	Front of the
	Home

Pool

Type of Pool:	In-ground pool
Size:	200 SF

Location: Southwest  
Shape: Rectangle  
Pool Equipment Location: In the Garage

Pool Deck

Size: Per Plans  
Location: Surrounding pool

Partial Garage / Cabana Conversion

Type of Existing Structure: Detached garage  
Size of Existing Garage: @ 620SF  
Location: Southeastern portion  
Number of Existing Bays: 3  
Height: 17.6 ft.  
Utilities: Per testimony / plans  
Living Space ?:  
will Neither the garage nor the cabana  
habitable space. be utilized as living /

Note: The Applicants propose to convert a portion of the existing detached garage into a cabana. Upon completion of the conversion, the garage portion of the structure will contain @ 424.64 SF, and the cabana portion of the existing accessory structure will contain 195.36 SF

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

1<sup>st</sup> Floor

Kitchen  
Breakfast Area  
Dining Area  
Living Room  
Office  
Foyer  
Bathroom

Pantry  
Bathroom  
Beach Room  
Mud Room  
Patio  
Front Porch

2<sup>nd</sup> Floor

Master Bedroom  
Master Bathroom  
Master Sitting Area  
Bedroom 2  
Bedroom 3  
Covered Balcony

- Upon completion of the partial garage / cabana conversion, the accessory structure shall consist of the following:

2 Bay Garage

Bathroom  
Cabana Area

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

**VARIANCE**

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

Variance:

*SIZE OF ACCESSORY STRUCTURE: Pursuant to prevailing zoning regulations, in addition to a garage, each single-family home is permitted to have one additional accessory structure, containing no more than 120 SF. In the within situation, the Applicants' proposed cabana will contain 195.36SF and thus, Variance relief is required (for the size of the cabana).*



## **PUBLIC COMMENTS**

**WHEREAS**, the following members of the public expressed questions, comments, statements in connection with the Application:

- Douglas Blagdon
- Anthony Malanga
- Kurinne Pongrac

## **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 amended Application is hereby **approved / 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 4 Brooklyn Boulevard, Sea Girt, New Jersey, within the Borough's District 1, East Single-Family Zone.
3. There is an existing single-family home at the site, with a detached garage.
4. The Applicants propose to effectuate a number of improvements at the site, including, the following:
  - The elimination / demolition of the existing rear deck / patio (and the replacement / expansion of the same, in an uncovered format);

- The elimination / removal of a portion of the existing driveway;
- Proposed renovation of the single-family home;
- Construction of an addition to the existing single-family home;
- Installation of a swimming pool;
- Installation of a pool deck; and
- Conversion of a portion of the existing detached 3 bay garage into a cabana.

5. Such a proposal requires Bulk Variance relief.

6. The Sea Girt Planning Board is statutorily authorized to grant the requested 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 Application as initially presented, required approval to effectuate a number of improvements, including the following:
  - The elimination / demolition of the existing rear deck / patio;
  - The elimination / removal of a portion of the existing driveway;
  - Proposed renovation of the single-family home;
  - Construction of an addition to the existing single-family home;
  - Installation of a swimming pool;
  - Installation of a pool deck;
  - Conversion of a portion of the existing detached 3 bay garage into a cabana;
  - Installation of a covered porch; and

- Installation of an open patio / pergola in the rear yard area.
- The proposed installation of the covered porch, and the proposed installation of the open patio / pergola triggered the need for building coverage Variance relief and Mechanical Equipment Side Yard Setback relief. Specifically, the initial proposal provided a building coverage of 23.63%; whereas a maximum 20% building coverage was otherwise allowed. Likewise, the initially submitted Application required a Variance for a non-compliant Pool Equipment Setback of only 6.32ft and a non-compliant air condition Side Yard Setback of only 5.45ft.
- Some Board members did not believe that sufficient testimony was presented to justify the building coverage and Pool / Mechanical Setback relief.
- Some Board Members were not satisfied that the existence of sunlight in the rear yard area, in and of itself, justified Variance relief.
- Some Board Members did not believe there were any unique topographical / grading / lot size / shape features which justified the building coverage / Mechanical Equipment Setback relief.
- Some Board Members were of the opinion that the excess coverage and non-compliant setbacks were problematic.
- Some Board Members were of the opinion that sufficiently compelling reason were not submitted to justify the building coverage and / or Side Setback relief.
- Some Board Members were of the belief that the Plans could be modified so as to eliminate and / or otherwise reduce the nature / extent of the non-conforming building coverage and setbacks.
- Some Board Members were concerned that given the oversized nature of the Lot, that building coverage relief and Side Setback relief were not justified.
- Some Board Members were of the belief that sufficient / realistic / functional options existed which could eliminate and / or reduce the nature / extent of Variance relief necessary. For instance, some Board Members were of the belief that various types of awnings could equally minimize the sun exposure in the backyard area, etc.

- Other Board Members, however, were not offended by the initially submitted building coverage relief or the initially submitted Pool Equipment Setback relief. Specifically, some Board Members were of the belief that there would be no adverse impact associated with the building coverage and setback relief (particularly in that the improvements would not necessarily be visible from the public street). Moreover, some Board Members were impressed by the fact that several directly affected neighbors attended the Public Hearing and expressed support for the Application. Some of the Board Members were also of the belief that there was no adverse aesthetic/visual impact associated with the proposed relief. Finally, some Board Members were impressed with the fact that although a building coverage Variance was necessary, the overall lot coverage at the site was being simultaneously reduced.
- The Board Members engaged in a rather intense and good faith debate relative to the building coverage / Mechanical Equipment Setback relief.
- Based upon the on-the-record discussion, it did not appear that a majority of the Board Members were inclined to approve the building coverage or setback coverage.
- As a result of the above concerns, and other concerns referenced during the Public Hearing process a majority of the Board Members did not appear inclined to approve the Variance relief associated with the initially submitted proposal.
- Consequently, the Public Hearing process was adjourned so that the Applicants and their representatives could more formally review / analyze the Board concerns, and more formally review / consider proposed Plan amendments.
- The Public Hearing process was, in fact, adjourned so that the initially submitted Application could be reconsidered by the Applicants.
- Revised Plans were ultimately prepared, submitted, and marked into the Record as A-9 and A-10.
- The Plan revisions, as aforesaid, incorporated a number of significant changes – including, the following:
  - The elimination of the covered porch (which, because there was no cover, the same did not count as Building Coverage);

- The elimination of the open patio/pergola;
  - The elimination of the building coverage variance; and
  - The elimination of the mechanical equipment/air conditioner setback variance.
- The aforesaid Plan amendments were intensely reviewed, discussed, analyzed, and considered at the May 18, 2022 Public Hearing.
  - Additionally, the Board Engineer supplemented the Board Review Memorandum so as to review and address the said changes.
  - The aforesaid Plan revisions significantly improved the overall proposal, at least in the minds of a majority of the Board Members.
  - The aforesaid Plan amendments eliminated some non-conforming aspects of the initially submitted proposal.
  - The aforesaid Plan amendments corrected / cured / eliminated some of the non-conforming features associated with the initial proposal.
  - The submitted Plans, as modified, reflected a more conforming site, more in keeping with the Prevailing Borough Regulations / Definitions.
  - The Plan revisions, as aforesaid, eliminated the non-conforming building coverage and non-conforming pool equipment / air conditioning set back deviations.
  - The Plan revisions, as aforesaid, substantially improved the merits of the overall application.
  - The application, as submitted/amended, requires variance relief for the size of an accessory structure. Specifically, per the prevailing zoning regulations, in addition to a Garage, each single family home can have one accessory not exceeding 120 SF (and no higher than 8 ft in wall height, with a maximum of 9/12 pitch roof). However, in the within situation, the proposed cabana is 195.36 SF., thereby requiring variance relief.
  - The Board critically reviewed the said request, and the impact associated therewith.
  - Initially, the Board notes that there is an existing 3 bay detached garage, which measures @ 620 SF.

- Per the testimony and evidence presented, the Applicants do not need a 3 bay garage.
- The Applicants are proposing to convert the right end portion of the existing garage into a cabana (to be utilized in conjunction with the pool approved herein.)
- Thus, per the proposal, the existing 620 SF garage structure will be utilized as follows:
  - 195.36 SF – Cabana
  - 424.64 SF - Garage
- The Board notes that no new building and no new exterior construction is proposed in connection with the within proposal to convert a portion of the existing Garage into a cabana.
- The partial Garage/Cabana conversion approved herein will not disturb any new or currently undeveloped land.
- The partial garage/cabana conversion approved herein, will not materially change the building coverage/lot coverage calculations at the site.
- The partial garage/cabana conversion approved herein will not change the overall size of the existing accessory building.
- The partial garage/cabana conversion approved herein will not change the height of the existing accessory structure.
- The partial garage/cabana conversion approved herein will not change the orientation of the existing accessory structure.
- Under the circumstances, the partial garage/cabana conversion approved herein constitutes a good civic design concept.
- The Board is aware that because the existing garage already exists, the Applicants could, as a matter of right, construct a new 120 SF accessory structure on the site (per the language of the existing zoning regulations).
- The installation/construction of a new 120 SF accessory structure on the site would not, under the circumstances, be appropriate or preferred.
- Per the testimony and evidence presented, the as of right construction of a new 120 SF accessory structure at the site ( to

complement the existing 3 bay garage) is not favored by the neighbors or the Planning Board Members.

- The partial garage to garage/cabana conversion approved herein represents a practical, functional, and non-invasive fashion in which the site can more appropriately accommodate the Applicants' needs.
- As indicated, the Applicants testified that they do not utilize the existing 3<sup>rd</sup> bay of the existing garage (because, with the angle of the same, it is difficult to safely maneuver vehicles into and out of the same.)
- The Board notes that the proposed cabana will have a wall height and a roof pitch which complies with the prevailing design standards.
- Currently, the existing garage structure contains @ 620 SF, which exceeds the 500 SF maximum garage size otherwise allowed. With the partial garage to garage/cabana conversion approved herein, the actual garage size will be reduced from 620 SF to @ 424.64 SF. Thus, as a result of the within approval, a non-conforming garage size will be reduced to a conforming garage size.
- Per the testimony and evidence presented, and per the conditions of the within approval, the garage and cabana will not be utilized as living/habitable space.
- The pool equipment will be located inside the garage, in a zoning compliant location.
- The pool equipment will be fully screened/enclosed.
- In conjunction with the within approval, the Applicants will be installing a drywell, which will help improve the overall drainage situation at the site.
- Approval of the within application will not materially increase the overall intensity of the site.
- Approval of the within application will not compromise the privacy interests of the affected neighbors.
- Approval of the within application will not compromise air, space, and light at and around the site.

- There were no public objections associated with the application. In fact, a number of surrounding residents attended the public hearings and encouraged approval of the application.
- Subject to the conditions contained herein, there will only be a minimal visual impact associated with the within approval.
- Even some of those members who were inclined to approve the initially submitted application commented that the amended application did, in fact, represent a better overall design alternative for the Borough of Sea Girt.
- All Board Members thanked the Applicants and their professionals for having the plans revised so as to address the Board's previously referenced concerns.
- The Board is aware that one of the purposes of the Municipal Land Use Law suggests that Applications should be approved if the same can promote air, space, and light. The Board finds that approval of the Application will, in fact, promote air, space, and light (particularly with the absence of any setback or coverage variances).
- In accordance with one of the purposes of the New Jersey Municipal Land Use Law, the Board finds that the within Application will result in sufficient space being created for a conforming single-family residential use.
- The Board appreciates the concessions / modifications submitted by the Applicants (in connection with the submission of the revised Plans).
- Single-family use as proposed / approved / continued herein, is a permitted use in the subject Zone.
- The location of the proposed cabana (given the fact that the host garage structure already exists) is practical and appropriate.
- The location of the proposed improvement is practical, and can be constructed without causing a substantial / detrimental impact to the public good.
- Subject to the conditions contained herein, the installation of the improvements authorized herein will not overpower / overwhelm the subject Lot.



- The size of the proposed addition is appropriate – particularly as evidenced by the fact that the same will satisfy the Borough's Prevailing Height Requirements, as well as the Borough's Prevailing Building Coverage/Lot Coverage Requirements.
- The improvements authorized herein are attractive and upscale, in accordance with Prevailing Community Standards.
- The site will provide a sufficient amount of off-street parking spaces for the Applicants' single-family use and thus, no Parking Variance is required.
- The existence of sufficient and appropriate parking is of material importance for the Board – and but for the same, the within Application may not have been approved.
- The proposed improvements authorized herein will render the existing structure more functional and more modern (and more able to accommodate the Applicants' need for increased living space).
- Given the size of the Lot, the subject property can physically accommodate the Applicants' proposal.
- Given the size the existing Lot, the renovated structure approved herein will not overpower the subject property / neighborhood.
- Importantly, approval of the within Application, will not trigger the need for any Lot Coverage Variance or Building Coverage Variance.
- The construction of the proposed addition will not materially change the overall height of the existing home.
- The addition approved herein will have a conforming height.
- The design of the proposed improvements is attractive and will be architecturally/aesthetically compatible with the neighborhood.
- Per the testimony and evidence presented, and subject to the conditions contained herein, the renovation approved herein will not detrimentally change / affect the grading at the Site.
- Approval of the within Application will allow the Applicants to more functionally and comfortably use and enjoy the property.

- The proposed addition will be architecturally and aesthetically consistent with the existing structure.
- Approval of the within Application will not intensify the existing (and permitted) (and to-be-continued) single-family residential use at the site.
- Sufficiently detailed testimony / plans were represented to the Board.
- The proposed addition / improvements should nicely complement the property and the neighborhood.
- Subject to the conditions contained herein, the proposal will not appreciably intensify the single-family nature of the lot.
- Additionally, the architectural/aesthetic benefits associated with the proposal outweigh the detriments associated with the Applicants' inability to comply with all of the specified bulk standards.
- 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.
- 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.
- Subject to the conditions contained herein, the Application as modified satisfies the Statutory Requirements of N.J.S.A. 40:55D-70(c) (Bulk Variances).

Based upon the above, and for the other reasons set forth herein, and during the Public Hearing process, the Board is of the unanimous opinion that the requested relief (associated with the modified Plans) can be granted without causing substantial detriment to the public good.

## **CONDITIONS**

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

- a. The Applicants shall comply with 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 February 10, 2022 (last revised May 2, 2022) Review Memoranda of Leon S. Avakian, Inc. (A-5 and A-11).
- c. The Applicants shall cause the plans to be revised so as to portray and confirm the following:
  - Confirmation that the air conditioning condenser shall be placed on the roof of the garage;
  - Confirmation that the site shall comply with the prevailing building coverage requirements, as the said variance request was withdrawn (because the expanded rear deck will not have a cover);
  - Confirmation that the site shall comply with the prevailing mechanical/air conditioning setback requirements, as the said variance request was withdrawn;
  - The inclusion of Code-compliant fence details;
  - The inclusion of a note confirming that no additional cabana or accessory structure shall be placed on the site (as long as the cabana approved herein exists on the site);
  - The inclusion of noise-attenuating details for the air conditioning condenser to be placed on the roof of the garage (and the said details shall be reviewed and approved by the Board Engineer);
  - Confirmation that the air conditioning condenser (to be placed on the roof of the garage) shall be fully screened (in a manner reviewed and approved by the Board Engineer);

- Confirmation that a conforming parapet wall shall be placed on the roof of the garage (to screen the roof-top air conditioning condenser) (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 prevailing pool lighting requirements;
  - The inclusion of a drywell system, in a manner approved by the Board Engineer;
  - The inclusion of a note confirming that the drains shall be tied into the roof leaders; and
  - The inclusion of a note confirming that the Garage roof shall comply with all prevailing Building / Construction / Zoning Code Requirements, including those pertaining to snow load details, wind load details, anchoring details, etc.
- d. As referenced, the Applicants shall not install any other accessory structure on the site as long as the partially converted cabana (approved herein) exists on the site. A confirming "Notice of Restriction" (once approved by the Board Attorney, in writing) shall be recorded in the office of the Monmouth County Clerk, and proof of such recording shall be presented to the Board Secretary.
- e. The Applicants shall comply with any affordable housing obligations / contributions / directives which may be required per the Borough of Sea Girt, the Court system, COAH, or any other agency having jurisdiction over the matter.
- f. 4 Sets of revised plans shall be submitted to the Board Secretary.
- g. If requested by the Board Engineer, the Applicants shall submit a Grading Plan and grading/drainage details, which shall be approved by the Board Engineer.
- h. The Applicants shall manage storm-water run-off during and after construction (in addition to any other prevailing / applicable requirements/obligations.)
- i. The Applicants shall perpetually maintain, replace, and replant the landscaping at the site (so that the benefits associated therewith last, in perpetuity.)

- j. The Applicants shall comply with any prevailing Municipal Tree Preservation Ordinance.
- k. The drywell shall be installed and maintained in accordance with industry/manufacturing guidelines, and other best practices.
- l. The Applicants shall obtain any applicable permits / approvals as may be required by the Borough of Sea Girt - including, but not limited to the following:
  - Building Permit
  - Plumbing Permit
  - Electric Permit
  - Demolition Permit
- m. If applicable, the proposed structure shall comply with applicable Provisions of the Americans with Disabilities Act.
- n. 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.
- o. The proposed addition shall comply with the Borough's Prevailing Height Regulations (as no height Variance relief is granted herein).
- p. The construction shall be strictly limited to the modified 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.
- q. The Applicants shall comply with all terms and conditions of the Review Memoranda, if any, issued by the Board Engineer, Borough Engineer, Construction Office, Zoning Office, the Department of Public Works, the Bureau of Fire Prevention and Investigation, and/or other agents of the Borough.
- r. 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 Freehold Soil Conservation District, and the local Utility authorities, etc.
- s. The Applicants shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.

- t. If required by the Board / Borough Engineer, and, if authorized by the New Jersey MLUL, the Applicants shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.
- u. Unless otherwise agreed by the Planning Board, the approval shall be deemed abandoned, unless, within 24 months from adoption of the within Resolution, the Applicants obtain Building Permits for the construction / development approved herein.
- v. **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 modified Plans approved herein. If conditions at the site are materially different than what was presented to the Board, or different from what was otherwise known, or in the event post-approval conditions are different than what was anticipated , the Applicants' representatives are not permitted to unilaterally deviate, or build beyond, what is approved herein. For example, if the testimony / plans provide that an existing building / structure is to remain, the same cannot be unilaterally demolished / destroyed (without formal Board/Borough consent), regardless of the many fine construction reasons for doing so. That is, the basis for the Board's decision to grant Zoning relief may be impacted by any change of conditions. As a result, Applicants and their representatives are not to assume that any 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 3<sup>rd</sup> 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 contrary to the representations made before the Board shall be deemed a violation of the within approval.

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

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

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

FOR THE APPLICATION: Karen Brisben, Tom Britt, Mayor Don Fetzer, Stan Koreyva, Eileen Laszlo, Robert Walker, John Ward, Norman Hall

AGAINST THE APPLICATION: None

ABSTENTIONS: None

NOT ELIGIBLE TO VOTE: Councilwoman Diane Anthony (recused)

ABSENT: Carla Abrahamson, Jake Casey

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

AYES: Karen Brisben, Tom Britt, Mayor Don Fetzer, Stan Koreyva, Eileen Laszlo, John Ward, Norman Hall

OPPOSED: None

ABSTAINED: None

NOT ELIGIBLE TO VOTE: Councilwoman Diane Anthony (recused), Jake Casey

ABSENT: Carla Abrahamson, Robert Walker

Also included in the above approval is the Notice of Restriction:

### **NOTICE OF RESTRICTIONS**

1. Richard and Kerry Shaughnessy previously submitted a Development Application to the Sea Girt Planning Board for the property located at 4 Brooklyn Boulevard, Sea Girt, New Jersey (Block 12, Lot 11).
2. The said Application sought approval to effectuate a number of improvements on a Lot containing a single-family home.
3. In conjunction with the above point, the subject Application specifically sought approval to effectuate the following:
  - The elimination / demolition of the existing rear deck / patio (and the replacement / expansion of the same, in an uncovered format);
  - The elimination / removal of a portion of the existing driveway;
  - Proposed renovation of the single-family home;
  - Construction of an addition to the existing single-family home;
  - Installation of a swimming pool;
  - Installation of a pool deck;
  - Conversion of a portion of the existing detached 3 bay garage into a cabana.



4. On or about May 18, 2022, the subject Application was conditionally approved by the Sea Girt Planning Board.
5. The memorializing Resolution was adopted on or about June 15, 2022.
6. The memorializing Resolution contained the following conditions:
  - *The inclusion of a note confirming that no additional cabana or accessory structure shall be placed on the site (as long as the cabana approved herein exists on the site)*
  - *As referenced, the Applicants shall not install any other accessory structure on the site as long as the partially converted cabana (approved herein) exists on the site. A confirming "Notice of Restriction" (once approved by the Board Attorney, in writing) shall be recorded in the office of the Monmouth County Clerk, and proof of such recording shall be presented to the Board Secretary.*
7. The within Notice is being recorded as a requirement / condition of the Approval of the Sea Girt Planning Board.
8. Interested members of the public are encouraged to review the full Resolution of Conditional Approval, which can be obtained at the office of the Secretary of the Sea Girt Planning Board

The next item was consideration of Resolution of approval for Block 5, Lot 9, 1003 Ocean Avenue, owned by James & Kathleen O'Brien, to allow construction of a new home. Mr. Kennedy said this variance application was mostly driven by the fact that this lot does not front on a public street and, by virtue of our unique Ordinance, the calculations are done through the nearest roadway, which is Seaside Place. The architect had one correction to the draft Resolution on the elevation of Seaside Place and Mr. Kennedy said the elevation is higher and it should read lower, this correction has been made. He then went over the conditions: compliance with the Board Engineer's review, installation of a drywell which is to be reviewed by the Board Engineer, the inclusion of a note stating there will be elimination of at least 71 square feet from the original plan which takes away the need for variance relief for building coverage, confirmation that the driveway and curb cut width shall be cut from 20 feet to 18 feet, maintain drywells in accordance with industry standards, clarification that the paper street is also referred to as Ocean Avenue and proper water/sewer hookup obligations. The Board can adopt the amended Resolution if it acceptable. Mr. Ward asked why the "boilerplate" statement is not included in this Resolution as it is in others and Mr. Kennedy said his thought was that this mostly deals with additions, etc. and, in

this case, they are demolishing the home entirely, but he can put it in as there are other points in this “boilerplate” statement that may apply. Mayor Fetzer questioned the point on page 8 after Mr. Kennedy said the elevation will be higher (that has been corrected), he felt the wording “more intense” should be changed to “lower grade level” and Mr. Kennedy agreed.

At this time a motion was made by Mrs. Brisben to accept the Resolution with the above changes, this seconded by Mr. Ward. The following Resolution was presented for approval:

**WHEREAS**, James and Kathleen O’Brien have made Application to the Sea Girt Planning Board for the property designated as Block 5, Lot 9, commonly known as 1003 Ocean 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 effectuate the following:

- Demolition of an existing single-family dwelling; and
- Construction of a new 2 ½ story single-family home, with a detached garage, and cabana.

#### **PUBLIC HEARING**

**WHEREAS**, the Board held a Public Hearing on May 18, 2022, 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:

- *Land Development Application Package, introduced into Evidence as A-1;*
- *Variance Plan, prepared by KBA Engineering Services, LLC, dated January 4, 2022, last revised February 21, 2022, introduced into Evidence as A-2;*

- *Architectural Plans, prepared by Virtuoso Architecture, dated February 16, 2022, consisting of 15 sheets, introduced into Evidence as A-3;*
- *An outbound and topographic Survey, prepared by Clearpoint Services, LLC, dated July 27, 2021, introduced into Evidence as A-4;*
- *Leon S. Avakian, Inc. Review Memorandum, dated April 22, 2022, introduced into Evidence as A-5;*
- *Aerial Photograph of the subject property, introduced into Evidence as A-6;*
- *A Photo Exhibit containing photographs of the subject property and surrounding properties, consisting of 11 pages, introduced into Evidence as A-7;*
- *Affidavit of Service; and*
- *Affidavit of Publication.*

#### **WITNESSES**

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

- James O'Brien, Applicant;
- Kathleen O'Brien, Applicant;
- Joseph Kociuba, Engineer / Planner;
- Paul Grabowski, Architect;
- Michael Rubino, Jr., Esq., appearing

#### **TESTIMONY AND EVIDENCE PRESENTED**

**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 located on the subject Lot, which is an Ocean-front Lot.

- The existing home was, upon information and belief, constructed in or about the 1940's.
- The existing structure was neither built nor designed for the needs of a modern family.
- There are several deficiencies / defects / concerns associated with the existing structure/property. Some of the aforesaid concerns include the following:
  - a. All mechanical / electrical / plumbing systems in the structure need to be upgraded and / or replaced;
  - b. The heating system is outdated;
  - c. The existing windows at the site are compromised and need to be replaced;
  - d. Some previously effectuated additions at the site do not appear to make a lot of sense from a design standpoint, a functional standpoint, and / or an aesthetic standpoint;
  - e. There is not an open design layout / floor plan for the existing home (particularly on the 2<sup>nd</sup> floor);
  - f. The existing driveway location / orientation / angle / size compromise the ease with which an individual (in a vehicle) can backout of the driveway.
- Based upon the above, the Applicants are of the belief that demolition is more appropriate than just mere renovation.
- The Applicants propose to effectuate the following:
  - Demolition of an existing single-family dwelling; and
  - Construction of a new 2 ½ story single-family home, with a detached garage, and cabana.
- Details pertaining to the proposed home include the following:

Size:	Per Plans
Location:	Center of Property, per plans
Height:	37.68 ft
Number of stories:	2 ½
Number of bedrooms:	5
Number of bathrooms:	Per Plans

- Details pertaining to the proposed garage include the following:

Type of garage:	Detached
Size:	440 SF
Height:	17.62 ft.
Location:	Southwestern part of the property
Living purposes ?:	The garage will not be utilized for living / habitable purposes.

- Details pertaining to the proposed cabana include the following:

Size:	115 SF
Height:	Per Plans
Location:	Southern portion of property
Features:	The cabana will include an outdoor shower
Living space ?:	The cabana will not be utilized as a dwelling unit.

- Materials for the proposed improvements include cedar shake siding and a stone veneer foundation.
- Upon completion of the construction process, the home will include the following:

#### FIRST FLOOR

Foyer  
 Den  
 Bar Area  
 Laundry Room  
 Mechanical Room  
 Bedroom  
 Bedroom  
 Storage Room  
 Covered Porch  
 Covered Porch  
 Deck

#### SECOND FLOOR

Kitchen

Eating Room  
Great Room  
Master Bedroom  
Master Bathroom  
Bathroom  
Vestibule  
Covered Balcony

#### TOP HALF STORY

Bedroom  
Bedroom  
Loft Area  
Mechanical / Storage Area  
Mechanical / Storage Area  
Mechanical / Storage Area  
Mechanical / Storage Area  
Mechanical / Storage Area  
Covered Balcony

- Upon completion of the single-family home, the Applicants anticipate moving to the site on a full time basis.
- The Applicants will be utilizing licensed contractors in connection with the construction process.
- The Applicants anticipate having the work completed in the near future.

#### VARIANCES

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

Variances:

*REAR YARD SETBACK: 30 ft. required; whereas 19 ft. proposed from the Paper Street / Right-Of-Way;*

*HEIGHT OF A PRINCIPAL STRUCTURE: a maximum height of 35 ft. allowed; whereas, 37.68 ft. proposed (measured from the crown of Seaside Place);*

*GARAGE HEIGHT: 16 ft. allowed; whereas 17.62 ft. proposed;*

*DRIVEWAY WIDTH: Maximum 14 ft. allowed; whereas  
18 ft. proposed (as amended);*

*CURB-CUT WIDTH: Maximum 13 ft. allowed; whereas  
18 ft. proposed (as amended);*

### **PUBLIC COMMENTS**

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

- Robert Kregg

### **FINDINGS OF FACT**

**NOW, THEREFORE, BE IT RESOLVED**, by the Sea Girt Planning Board, after having considered the aforementioned Application, plans, evidence, and testimony, that the Application is hereby **approved / granted with conditions**.

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

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

9. The subject property is located at 1003 Ocean Avenue, Sea Girt, New Jersey, within the Borough's District 1, East Single Family Zone.

10. The subject property contains an existing single family dwelling, which, is rather old / out-dated, and which has not been designed to accommodate the living needs of a modern family.

11. As such, the Applicants propose the following:

- Demolition of an existing single-family dwelling; and
- Construction of a new 2 ½ story single-family home, with a detached garage, and cabana.

12. Details pertaining to the proposed home, proposed garage, and proposed cabana are set forth elsewhere herein, and in the Plans which have been submitted.

13. Such a proposal requires Bulk Variance approval.

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

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

- The Application as presented requires Variances for the height of the proposed single-family home.
- Under New Jersey Municipal Land Use Law, a Height Variance for a principal structure can be either a Bulk “c” Variance or a Use / “d” Variance. Specifically, if the nature of the height deviation (for the principal structure) exceeds 10 ft. or 10%, then, in that event, Use / “d” Variance relief is necessary. Otherwise, if the height deviation for the principal structure is less than 10 ft. or 10 percent, then, in that event, Bulk “c” Height Variance relief is necessary.
- In the within situation, the Applicant is proposing a Building Height of 37.68 ft. (whereas the maximum allowable height in the Zone is 35 ft.).
- As a result of the above, the Board recognizes that the height deviation is less than 10 ft. or 10% and thus, the Board is cognizant that the Height Variance (for the principal structure) requires Bulk “c” Variance relief.
- The Board Members critically reviewed the requested Height Variance relief and the justifications for the same.
- Initially, the Board notes that although the subject property is an Ocean-front property, the subject property does not front on an improved public street. Rather, the subject Lot fronts on a paper street / right-of-way.
- The Board notes that the said fact is quite important, particularly in that per the Prevailing Zoning Regulations, the height of a home is measured from the crown of the nearest public road.



- As such, in the within situation, pursuant to the Sea Girt Zoning Ordinance, the height of the proposed home is not measured from the paper street (which the Applicants essentially utilize as a road) but rather, the height of the home is measured from the crown of Seaside Place, even though the aforesaid improved Seaside Place is approximately 75 ft. from the subject development site.
- The Board is aware that there is a significant grading change between the Applicants' subject property and the nearest improved public road (i.e. Seaside Place).
- Per the testimony and evidence presented, the elevation of Seaside Place is approximately 12.7 ft.; whereas the grade of the Applicants' subject Lot is significantly higher.
- Consequently, per the terms of the Zoning Ordinance, the Applicants are required to measure their home based upon the lower grade level of Seaside Place, an improved public street, notwithstanding the fact that Seaside Place is approximately 75 ft. from the Applicants' development site.
- Per the testimony and evidence presented, the Board notes that the said measurement/calculation formula causes the Applicants to essentially "lose" approximately 4.4 ft. of house height to which they could otherwise avail themselves.
- The aforesaid scenario (including the Borough's calculation methodology) compromises the ability of the Applicants to comply with the Prevailing Height Regulations.
- The Board notes that the said situation is quite unique, and, upon information and belief, only affects approximately 5 properties within the Borough of Sea Girt.
- The Board recognizes that the Borough's Prevailing Height calculation formula places the Applicants at a so-called disadvantage when designing a new home for the site.
- The nature of the existing situation, as aforesaid, constitutes a hardship within the meaning of the New Jersey Municipal Land Use Law.
- There was some discussion 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, and the Board Members agreed that doing so would require the Applicants to substantially eliminate / reduce

roof pitches, roof lines, eve lines, etc., which would, in turn, materially compromise the overall aesthetic appeal of the new home. The Board accepts the said rationale.

- In conjunction with the above point, and per the testimony and evidence presented, the Board notes that the installation of a height-compliant flat roof, or a relatively flat roof, would neither be practical, functional, nor aesthetically pleasing.
- The Applicants' representatives testified that the subject home measures 33 ft. 4 inches from top to bottom. 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 / larger / taller than other homes in the immediate area.
- Per the testimony and evidence presented, the home approved herein will not be materially taller than the homes in the immediate surrounding area.
- Given the fact that the Height Variance is driven by the Borough's calculation and methodology, the Board finds that the height of the structure approved herein will not overpower the Lot.
- The Board notes that the rationale for the height relief (for the principal structure) applies to the proposed garage as well.
- The 17.62 ft. garage height approved herein will not cause substantial detriment to the public good.
- Per the Applicants' representatives, because of the Borough's unique height calculation methodology (to be utilized in the within situation, where the subject Lot does not front on an improved public street), a height-conforming home would necessarily require a low pitch roof, or a flat roof, which would not be in keeping with the design and the overall aesthetic appeal of other homes in the area.
- The Board Members essentially engaged in a civil and good faith debate as to the overall merits of the application. In that regard, concerns / issues associated with the proposal included the following:
  - i. There was a concern regarding the non-conforming nature of the proposal;
  - ii. There was a concern regarding the fact that the existing structures will be demolished and, as such,

the Applicants were in a position to relatively easily design structures which would/could comply with the Borough's overall height requirements;

- iii. There was a concern that the prevailing situation might not constitute a true hardship with the meaning of the New Jersey Municipal Land Use law;
- iv. There was a concern that the Applicants could propose a smaller / conforming home for the site;
- v. There was a concern regarding the negative precedent would / could occur in conjunction with an approval of the application; and
- vi. There was a concern regarding the number of Variances associated with the within Application.

Those arguments supporting the granting of the Variance relief included the following:

- i. The Board noted that, per the testimony and evidence presented, that there was a need to demolish the existing structure and to make the home more modern, more functional, and more practical;
- ii. The Board noted the beautiful design of the proposed home, and how the same would appropriately blend in with the character of the neighborhood;
- iii. The Board noted the hardship associated with the property, given the Borough's height calculation methodology (when the subject Lot does not front on an improved public street);
- iv. Board Members noted the equities associated with the situation, resulting from the unique way in the Borough Ordinance requires the height of the structure to be measured from a public street (even though where here, the actual public street is located approximately 75 ft. from the development site);
- v. Some Board Members noted that the Borough's unique calculation methodology relative to height caused the Applicants to essentially "lose" approximately 4.4 ft. of home which would otherwise be allowed;

- vi. There was a recognition that the proposed home would not appear dramatically out of character with the other homes in the neighborhood.

After analyzing the above factors, and the other factors presented during the Public Hearing process, the Board determined that the requested Variances can be granted without causing substantial detriment to the public good.

- The Board notes that, per the testimony and evidence presented, demolition of the existing home is more appropriate than just mere renovation.
- The Application as presented and modified also requires some Variance relief for the driveway and curb-cut, including, the following:

*DRIVEWAY WIDTH: Maximum 14 ft. allowed;  
whereas 18 ft. proposed (as amended);*

*CURB-CUT WIDTH: Maximum 13 ft. allowed;  
whereas 18 ft. proposed (as amended);*

- As indicated, the Board notes that the subject property does not front a public street. As such, the Board notes, positively, that there will be minimal adverse aesthetic impact associated with the within approval.
- Additionally, because the subject property does not front an improved public street, the Board also finds that there will be no adverse impact associated with the oversized driveway.
- As part of the within approval, the new driveway will be located from one side of the property to the other side of the property.
- Per the testimony and evidence presented, the new driveway alignment will not compromise public safety at or around the subject property.
- Per the testimony and evidence presented, the newly located driveway approved herein will improve the ease with which an individual (in a vehicle) can enter the site, turn around on the site, pull out of the site, or back out of the site.

- The Board notes that the new driveway location approved herein, with the associated Driveway/curb-cut Variance relief, will improve overall safety at and around the site.
- The Board finds that the non-compliant driveway width approved herein will not have an adverse aesthetic impact on the site, the neighborhood, or the community as a whole.
- The Board also notes that the existing driveway at the site already exceeds the maximum driveway width (which is allowed per the Zoning Ordinance).
- The Board also notes that the new driveway location approved herein will not compromise and / or otherwise interfere with the location of any other existing driveways in the area.
- The Board is also aware that approval of the within Application will result in the demolition of the existing structure, and replacement of a new home, which is further away from the Ocean (than the current home). Towards that end, the Board recognizes that the aforesaid change in location (for the new structure) will help protect and preserve the neighboring views of the Ocean.
- The Board notes that approval of the within Application may also help alleviate the need for the Applicants to park off site.
- The Application as initially presented also required a Building Coverage Variance. Specifically, a maximum Building Coverage of 20% is allowed; whereas 20.71% was initially proposed.
- Some Board Members were of the belief that the relief was de-minimus in nature and, that the same could be granted without causing substantial detriment to the public good.
- Other Board Members, however, were troubled by the Building Coverage Variance. Specifically, there was a concern that given the fact that the within Application involved “new construction,” given the fact that the Lot size exceeded the minimum requirement for the Zone, that such Variance relief should not be needed.
- Some Board Members also recognized that the Building Coverage deviation (as initially sought) only represented approximately 71 SF of building area.
- The topic of the Building Coverage relief was problematic for a number of Board Members.

- After further review and discussion, the Applicant's representatives agreed to eliminate / loose / remove 71 SF of building at the site, resulting in a compliant Building Coverage calculation. (That is, the request for the building coverage variance relief was withdrawn.)
- The elimination of the Building Coverage Variance significantly improved the overall acceptability of the proposal.
- The Application as presented requires a Rear Yard Setback Variance. Specifically, a Rear Yard Setback of 30 ft. is required; whereas 19 ft. is proposed from the paper street / right-of-way. Again, given the fact that the subject property does not front on a public street, it is likely that the rear deviation will not be readily noticed by the public.
- The Board also notes that as an Ocean-front Lot, the technical rear yard area may, in fact, serve as a functional front yard area (thereby minimizing any adverse impact otherwise associated with the proposal).
- During the Public Hearing process, there was a concern expressed that the within Application involved new construction, but that the Application still nonetheless required approval for 5-6 Variances. The offended individual expressed concern about the general fear that Applicant's attempt to "build as big as possible" and still request Variance relief. The offended individual also expressed concern that the existence of an Ocean-front Lot does not, in and of itself, constitute a hardship within the meaning of New Jersey Municipal Land Use Law. The Board Members understand and appreciate the concerns of the offended individual. However, the Board simultaneously notes the very unique situation pertaining to the subject Lot (which does not front a public street), the Borough Requirement that height be measured from the nearest public road, and the fact that in the within situation, the nearest public road is located approximately 75 ft. away from the Applicants' property. The Board Members are also cognizant, as set forth elsewhere herein, that the driveway / curb-cut relief will improve overall safety at the site, without compromising the aesthetic / privacy / functional concerns of the neighbors or the Borough at large. Finally, the Board is also aware that the specific number of Variances which an Applicant requests is not as important as the overall impact the Variance relief will have on the site, the neighborhood, and the community as a whole. For instance, the Board is aware that even 1 Variance can have much more of a detrimental impact on the community than an Application requesting approval for 5-6 Variances. In the within situation, and after extensive Board review and analysis, the Board unanimously finds that the benefits of

granting the relief out-weigh any potential detriments associated therewith.

- The proposed single-family use is a permitted use in the subject zone.
- The proposed detached garage / cabana use is a permitted accessory use in the subject zone as well.
- All elements of the home and garage (except height) will comply with the Borough's prevailing Bulk requirements – including size, setbacks, number of stories, location, etc.
- The topographical features referenced herein (in conjunction with the Borough's unique height calculation methodology for a home for a Lot which does not front on a public street) justify granting the Variance relief for the height of the proposed new home/garage.
- The location of the proposed home / garage / cabana is practical and appropriate.
- The size of the proposed home / garage / cabana is appropriate, particularly given the size of the existing Lot.
- The Board notes that the subject Lot is a conforming Lot (in terms of Lot Area.) (i.e. 10,000 SF exists; whereas, only 7,500 SF is required.)
- The home / garage / cabana approved herein will not overpower / overwhelm the subject Lot.
- The home / garage / cabana approved herein will not overpower / dwarf other homes in the area – particularly in light of the nature of the surrounding residential uses.
- The home / garage / cabana 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 / improvements should nicely compliment the property and the neighborhood.
- Approval of the within Application will significantly improve the aesthetic appeal of the site.
- Construction of the home approved herein will likely minimize the extent of any future damage from flood / flooding.
- The Board notes that the existing home is not flood-compliant.
- The Board also notes, positively, that the new home approved herein will, in fact, comply with Prevailing Flood Requirements.
- The Board recognizes that one of the purposes of the New Jersey Municipal Land Use Law is, essentially, to help Applications which will help secure people from the adverse effects of flooding. For obvious reasons, the Board finds that approval of the within Application will advance such a purpose.
- Additionally, the architectural/aesthetic benefits associated with the proposal outweigh the detriments associated with the Applicants' inability to comply with all of the specified bulk standards.
- The architectural design of the proposed home / garage / cabana will not be inconsistent with the architectural character of other homes / garages / cabanas 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 improvements 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, 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 Applicants 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 April 22, 2022 (A-5).
- c. The Applicants shall comply with all Affordable Housing Rules / Regulations / Contributions / Directives as the Borough of Sea Girt, C.O.A.H., the Court System, and any other Agency having jurisdiction over the matter may require.
- d. The Applicants shall obtain any necessary / applicable outside approvals, including CAFRA Approval.
- e. The Applicants shall comply with Prevailing FEMA Requirements / Regulations.
- f. The garage / cabana shall not be utilized as a dwelling unit.
- g. The Applicants shall cause the Plans to be revised so as to portray and confirm the following:
  - The installation of a dry-well, the details of which shall be reviewed and approved by the Board Engineer.

- The inclusion of a note confirming the elimination of at least 71 SF of building coverage at the site (so as to eliminate the need for any Building Coverage variance relief).
  - Confirmation that the driveway and curb-cut width shall be reduced from 20 ft. to 18 ft.
  - Confirmation that the “Ocean Avenue” and “paper street” designation shall be corrected / clarified on the Plans.
- h. The Applicants shall, at the Applicants cost, obtain and satisfy any necessary water / sewer hook-ups / installation / activation costs, etc.
  - i. The Applicants shall install and maintain a dry-well in accordance with industry/manufacturing standards, as well as other best practices.
  - j. The Applicants shall supply the Board Secretary with a hard copy of the Exhibits marked into the record as A-6 and A-7.
  - k. The Applicants shall supply the Board Secretary with 4 sets of revised plans.
  - l. The Applicants shall comply with Prevailing Building Code / Construction Code Regulations.
  - m. Unless otherwise waived by the Board Engineer, or unless already effectuated, the Applicants shall submit grading / drainage calculations to the Board Engineer, for his review / approval (so as to confirm the absence of any grading / drainage issues.)
  - n. The Applicants shall obtain any and all necessary demolition Permits.
  - o. The Applicants shall comply with the provisions of the Borough’s Tree Preservation Ordinance.
  - 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 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 modified Plans approved herein. If conditions at the site are materially different than what was presented to the Board, or different from what was otherwise known, or in the event post-approval conditions are different than what was anticipated, the Applicants' representatives are not permitted to unilaterally deviate, or build beyond, what is approved herein. For example, if the testimony / plans provide that an existing building / structure is to remain, the same cannot be unilaterally demolished / destroyed (without formal Board/Borough consent), regardless of the many fine construction reasons for doing so. That is, the basis for the Board's decision to grant Zoning relief may be impacted by any change of conditions. As a result, Applicants and their representatives are not to assume that any 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 3<sup>rd</sup> parties.

- r. The Applicants shall obtain any applicable permits/approvals as may be required by the Borough of Sea Girt - including, but not limited to, the following:
  - Building Permit
  - Plumbing Permit
  - Electrical Permit
- s. If applicable, the proposed structure shall comply with applicable Provisions of the Americans with Disabilities Act.

- t. 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.
- u. 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.
- v. 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.
- w. The Applicants shall obtain any and all approvals (or Letters of No Interest) from applicable outside agencies - including, but not limited to, the Department of Environmental Protection, the Monmouth County Planning Board, and the Freehold Soil Conservation District.
- x. The Applicants shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.
- y. If required by the Board / Borough Engineer, or the NJMLUL, the Applicants shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.
- z. 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 Building Permit for the construction / development approved herein.

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

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

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

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

FOR THE APPLICATION: Councilwoman Diane Anthony, Karen Brisben, Mayor Don Fetzer, Stan Koreyva, Eileen Laszlo, Robert Walker, John Ward, Norman Hall

AGAINST THE APPLICATION: None

ABSTENTION: None

NOT ELIGIBLE TO VOTE: Tom Britt (recused)

ABSENT: Carla Abrahamson, Jake Casey

The foregoing Resolution was offered by Mrs. Brisben, seconded by Mr. Ward and adopted by roll call vote:

AYES: Councilwoman Diane Anthony, Karen Brisben, Mayor Don Fetzer, Stan Koreyva, Eileen Laszlo, John Ward, Norman Hall

NOES: None

ABSTAINED: None

NOT ELIGIBLE TO VOTE: Tom Britt (recused), Jake Casey

ABSENT: Carla Abrahamson, Robert Walker

#### OTHER BUSINESS:

Before going onto the Ordinance Review Committee report, Chairman Hall wanted to speak of the Resolution from Council on approving a Paddle Board Court in Crescent Park, as well as the latest plans that are part of that Resolution. The Board has been given the opportunity to give a courtesy review the Resolution and plans that were just received today and this will be done at next month's Planning/Zoning Board meeting on July 20<sup>th</sup> and the Planning Board will be able to comment on this then. Councilwoman Anthony just wanted to let it be known that she will not be able to attend next month's meeting.

He then went on to say the first meeting of the Ordinance Review Committee was held virtually and Jake Casey has been designated as the Chairman of this Committee. At this time Mr. Casey spoke and explained there were two Council members, two members of the public and two members from the Board, Tom Britt & himself. They would be meeting on the last Tuesday of the month at Borough Hall and they are going to try to be live and remote, to be hybrid. He sent out an agenda with the intent of explaining what will be discussed and has the help of Chairman Hall to get their thoughts in the right places. They are going to look at suggested Ordinance changes and are looking into the process of doing this and the expectations of what may happen. They already do have specific Ordinances to work on and if any Planning Board member has any thoughts or inputs to give these will be shared with the Committee. They will take into consideration what other towns do and then stated the specific Ordinances they are looking into; Chris Willms letter of December 2021 and the issues he brought forth, namely, mechanical equipment and issues, such as in a flood zone or not in one, impervious issues, lot coverage issues, protective wall height, sound proofing; there are pools and hot tubs with similar problems, there are flat roof pitch questions. He also spoke of inconsistencies with driveway widths, signs around town that need to be looked into to make sure they agree with the sign Ordinance, the Tree Ordinance issue, etc. They are going to look at Mr. Willms letter first and address those concerns and go on from there. The Committee wants to have an impact as soon as they can so they are hoping to dive right in and figure it all out, some Ordinances may just need wording changes and some may need more than that. He then asked if any member had any questions.

Chairman Hall commented that he felt Mr. Casey was doing a great job and he was going to stay away as much as possible and let the Committee do it's work but he was available for any help, if needed. He felt a lot was already done in a short time. Mayor Fetzer had two or three areas he would like the Committee to look into and will speak to Mr. Casey on this. Mr. Ward asked if there was any way to send information to the Committee, in case someone has information, and Chairman Hall said there is a

email address that will be published on the website that is set up for this. Chairman Hall asked for any comments from the public and there were none.

At this time, as there was no other business to come before the Board, a motion to adjourn was made by Mrs. Laszlo, seconded by Councilwoman Anthony and unanimously approved, all aye. The meeting was adjourned at 7:38 p.m.

Approved: July 20, 2022

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Karen S. Brisben, Secretary