

Wednesday, October 19, 2022

SEA GIRT PLANNING/ZONING BOARD  
REGULAR MEETING  
WEDNESDAY, OCTOBER 19, 2022

The Regular Meeting of the Sea Girt Planning Board was held on Wednesday, October 19, 2022 at 7:00 p.m. at the Sea Girt Elementary School on Bell Place. In compliance with the Open Public Meetings Act, notice of this Body's meeting had been sent to the official newspapers of the Board and the Borough Clerk, fixing the time and place of all hearings. Kevin Kennedy, Board Attorney, Peter Avakian, Board Engineer were also present and Board Secretary Karen Brisben recorded the Minutes, there were 11 people in the audience.

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

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

Absent: Carla Abrahamson, Tom Britt

Chairman Hall made the announcement that next month's meeting was going to be a hybrid one and noted the Planning/Zoning Board meetings are different than Council's as there are professionals showing exhibits in the Board meetings. He has met with the Borough Administrator, Jim Gant, on accommodating everyone and thanked Mr. Gant for working on this.

He reminded all that the Board is made up of volunteers and it works with the Master Plan and they are looking to update the Master Plan before 2028 when it is next due to be updated again. There is a Board Committee that is reviewing Ordinances of the town that have to do with Land Use and Zoning to make sure they are up to date and take care of any "loopholes". He asked the public to respect the Board's decisions and reminded all that the Board always listens to the needs of the people.

Chairman Hall said the applicants have one hour to do their presentation but he was going to hear public comments first this evening on any topic not on the agenda. Michael Bell, along with his wife Susan, of 313 Philadelphia Boulevard wanted to talk to the Board about issues they are having with the mechanical equipment and their experience over the past 18 months, this is in regard to a neighbor's generator and air conditioning units on the back of his garage. The current Ordinance is not effectively protecting the neighbors, since July 2021 they have called and emailed the Code Enforcement Officer, Chris Willms, concerning this matter as there is no shield on this equipment. They were told by the Enforcement Officer that the code is vague and not specific and the wall can be as low as 4 inches. They were told, by the builder, that there will be a wall built to their satisfaction. The Code Enforcement Officer told them a permanent CO will not be issued until this is done but, more recently, they were told by Mr. Willms that no wall is required now. This needs to be addressed by the Ordinance

Review Committee and he read part of their "Mission Statement" about promoting and improving the quality of life and community....etc. Mr. Bell said that all mechanical equipment should have a full wall and this will help this problem and the Mission Statement. He then presented 3 pictures to the Board, the first is a view from their kitchen, the second is a view from the sidewalk on Philadelphia Boulevard and the last one is scaffolding that the neighbor asked to be put in Mr. Bell's yard to do the work and he said that 6 workers came in with a two-story scaffolding and noted this was in the fall of 2020 and they were assured a wall would be put up.

Chairman Hall had sympathy for their condition and this is one of the reasons they are having this Ordinance Review Committee; the Ordinance says "wall" but doesn't describe it, the intent was to cover the view and this is one of the top issues on this Committee. Mr. Casey, Chairman of the Review Committee, sympathized as well with this problem and noted the Committee hopes to have something for next month's meeting on this, he asked Mr. Bell to submit the photos to him at the email for the Committee that is on the website. Mr. Casey said they have 17 Ordinances they are addressing and the two hot topics are trees and elevated mechanical equipment. Once the proposed changes are approved by the Planning Board it will go to Council for adoption; they hope to not have these concerns in the future.

Mr. Bell then had more comments on the code and Chairman Hall reminded him the Committee is working on this; he then spoke about back in 2018 he and his wife had an issue with their mechanicals and were told to put them on their garage but they didn't feel that was neighborly, their generator is on the ground with arborvitaes around it. Mrs. Bell then spoke and wondered why, 18 months ago, they were told a wall would be put up and no CO until then and now told there is no need for a wall.

Laura Napolitano of 111 New York Boulevard then spoke and said she has the same problem, there was construction at 110 Brooklyn and they put the mechanicals on top of their cabana/garage as well as their cabana bathroom door facing her house, also the pool equipment is there. They did put up a fence but it was not enough; as were the Bells, she was told the mechanicals would be covered. Also, to get to the equipment they need a ladder and that is right next to her fence. She did not feel the door of the cabana bathroom should be facing her yard, as well as the speakers they have put up that are loud, she was not sure that was allowed and had photos of this. She has contacted Chris Willms but he has not yet gotten back to her. Mr. Casey asked her to send the photos to the Ordinance Review Committee at [sgplannng@seagirtboro.com](mailto:sgplannng@seagirtboro.com) and it will be discussed.

Mr. Avakian felt it was important that the Board is discussing this in an open discussion with the public but the public has to understand that, as a Board, it only can review applications that come before the Board; the Board cannot review construction or zoning applications if they are compliant. There may be many instances of cases as were spoken about tonight that do not have to come before the Planning/Zoning Board. This is why the Board has set up an Ordinance Review Committee, to look at these issues. Sea Girt requires that mechanical equipment is installed in accordance with the

Ordinance, complying with the setback provisions, screened from the front and side streets and not visible from the neighboring properties. This is how the Ordinance reads and how the Board reviews it and he didn't quite understand the situations that have been allowed to occur because, according to the Ordinance, they are screened from the street and neighboring properties, this is what generated the change to allow them to be placed on buildings, to be screened. Chairman Hall agreed with Mr. Avakian and added this then becomes an enforcement issue and is way out of the Planning Board's jurisdiction. He said this is why they created the Ordinance Review Committee, to tighten up some Ordinances. Ms. Napolitano asked about the enforcement of this and Chairman Hall told her if she is not happy with the Enforcement Officer then she should take this to a Council meeting. Mrs. Laszlo added that many times the Planning Board is criticized for allowing this but many times these applications do not come before this Board, she agreed with Chairman Hall's suggestion that this be taken to Council and felt the Council's Attorney can be contacted and ask that this be put on as an agenda item to be addressed by them.

Chairman Hall then asked for approval of the Minutes of the September 21, 2022 meeting of the Board and this was done on a motion by Mrs. Laszlo, who complimented the Board Secretary on doing these Minutes as this was a difficult meeting, other members agreed; the motion was then seconded by Mr. Walker and then by voice vote, all ayes, no nays.

#### OLD BUSINESS:

The Board then considered an approval of a Resolution for a Minor Subdivision for Block 7, Lot 5, 712 Morven Terrace, owned by Norman Hobbie, to create two conforming buildable lots. Mr. Kennedy went over some minor changes to be made, misspellings, the Attorney's name had been misspelled and Mr. Sarto, the attorney for this application, had requested a change to say, under Condition M, that if variance relief is required for any future construction, they must back before this Board; Mr. Kennedy remarked this is the law anyway and he felt that would be acceptable to put in. Mr. Ward asked about the boilerplate that is usually in the Resolution but is not in this one and Mr. Kennedy said he will put that in. Mr. Ward then asked about putting in a time frame for this subdivision to be done and Mr. Kennedy said this is not addressed in a Minor Subdivision because NJ law says this has to be perfected within 190 days of approval so this stipulation is already covered.

The following revised Resolution was then presented for approval:

**WHEREAS**, Norman Hobbie has made Application to the Sea Girt Planning Board for the property designated as Block 7, Lot 5, commonly known as 712 Morven Terrace, Sea Girt, NJ, within the Borough's District 1, East Single-Family Zone, for the following approval:

- Minor Subdivision Approval; and

### **PUBLIC HEARING**

**WHEREAS**, the Board held a Public Hearing on September 21, 2022, Applicant's representatives having filed proper Proof of Service and Publication in accordance with Statutory and Ordinance Requirements; and

### **EVIDENCE / EXHIBITS**

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

- *Planning Board Application Package, introduced into Evidence as A-1;*
- *Minor Subdivision Plan, prepared by Lindstrom, Diessner, & Carr, P.C., dated July 12, 2022, consisting of 1 sheet, introduced into Evidence as A-2;*
- *Boundary and Topographic Survey, prepared by Lindstrom, Diessner, & Carr, P.C., dated May 6, 2022, consisting of 1 sheet, introduced into Evidence as A-3;*
- *Leon S. Avakian, Inc. Review Memorandum, dated September 1, 2022, introduced into Evidence as A-4;*
- *Land Development Application Completeness Checklist, introduced into Evidence as A-5;*
- *Public Notification for NJDEP Coastal Zone Management General Permit No. 4, undated, prepared by Envirotactics, introduced into Evidence as A-6;*
- *Memorandum to the Borough Tax Assessor, dated September 7, 2022, with hand-written responses contained thereon, introduced into Evidence as A-7;*
- *Review Memorandum from the Minor Subdivision Committee, dated September 13, 2022, introduced into Evidence as A-8;*
- *Affidavit of Service; and*

- *Affidavit of Publication.*

### **WITNESSES**

**WHEREAS**, arguments in support of the Application was presented by John Sarto, Esq.;

### **TESTIMONY AND EVIDENCE**

**WHEREAS**, testimony and other evidence presented by the Applicant's representatives revealed the following:

- The subject property is owned by Norman Hobbie.
- The subject property (i.e. Mother Lot) contains 20,500 SF.
- The subject property contains an existing single-family home.
- The Applicant proposes to effectuate the following:
  - Demolition of the existing structure on the site;
  - Subdivision of the Mother Lot into 2 Lots; and
  - Construction of a new single-family home on each of the 2 new Lots.
- The single-family use, as proposed herein, is a permitted use.
- As indicated, the Applicant's representatives are proposing to subdivide the subject property into 2 single-family Lots; namely, proposed Lot 5.01, proposed Lot 5.02.
- Details pertaining to the proposed Lots include the following:

#### **PROPOSED LOT 5.01 (714 Morven Terrace)**

Minimum Required Lot Area:	7,500 SF	
Proposed Lot Area:	10,250 SF	
Proposed Use:	New	single-family home

#### **PROPOSED LOT 5.02 (712 Morven Terrace)**

Minimum Required Lot Area:	7,500 SF	
Proposed Lot Area:	10,250 SF	
Proposed Use:	New	single-family home

- As referenced, both Lots will ultimately host a conforming (i.e. Variance-free) single-family home.

### **VARIANCE**

**WHEREAS**, the Application as presented does not require approval for any Variances; and

### **PUBLIC COMMENTS**

**WHEREAS**, no members of the public expressed any questions, comments, and / or statements in connection with the Application:

### **FINDINGS OF FACT**

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Board of the Borough of Sea Girt, 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:

1. The Sea Girt Planning Board has proper jurisdiction to hear the within matter.
2. The subject property is located at 712 Morven Terrace, Sea Girt, NJ, within the Borough's District 1, East Single-Family Zone. (The subject property (i.e. the mother Lot) is located on the east side of Morven Terrace, between Trenton Boulevard and Neptune Place.)
3. The subject site (i.e. the Mother Lot) currently contains 20,500 SF.

4. The Applicant proposes to demolish the existing structure and to subdivide the property into 2 Lots; namely, proposed Lot 5.01 and proposed Lot 5.02.

5. Such a proposal requires Minor Subdivision Approval.

6. There are no Variances associated with the within proposal.

7. Each of the new Lots created hereunder will ultimately host a new single-family home.

8. Single-family homes are permitted uses in the subject Zone.

9. The single-family homes to ultimately be constructed on the Lots will comply with all Prevailing Bulk Requirements, or require Variance relief via a subsequent application. That is, and as indicated, there are no Variances requested or required in connection with the within Application.

10. The newly created Lot Sizes comply with all Prevailing Lot Area Requirements.

11. Sufficient parking spaces will be provided on each new lot created hereunder.

12. There was no known public opposition associated with the Application.

13. Subject to the conditions contained herein, and subject to any necessary waivers, the Application as presented satisfies the Minor Subdivision Requirements of the Borough of Sea Girt.

14. Based upon the above, and subject to the conditions contained herein, the Board is of the unanimous opinion that the Variance-free Minor Subdivision Application can be granted without causing substantial detriment to the public good.

### **CONDITIONS**

During the course of the Hearing, the Board has requested, and the Applicant's Representatives have agreed to comply with the following conditions: (Note: Unless otherwise indicated, all Plan Revisions shall be subject to the review and approval of the Board Engineer.)

- a. The Applicant shall comply with all promises, commitments, and representations made at or during the Public Hearing process.
- b. The Applicant shall comply with all terms and conditions of the Leon S. Avakian Review Memorandum, dated September 1, 2022 (A-4).
- c. The Applicant shall comply with the terms and conditions of the Minor Subdivision Committee Review Memorandum, dated September 13, 2022 (A-8).
- d. The Applicant shall arrange for any curbs and driveways to be repaired / replaced, as necessary (as determined by the Board Engineer).
- e. The Application materials shall be revised so as to correct / confirm that the measurement of the existing Lot is 100 ft. X 205 ft.
- f. Per the testimony presented, there shall be new utility connections for both homes / lots.
- g. The Applicant shall obtain any necessary demolition Permits, as the Borough of Sea Girt may require.
- h. The Subdivision shall not be perfected until such time as all of the existing structures on the site are demolished / removed.
- i. In the event the subdivision is to be perfected via Deed, the Subdivision Deed (including the legal descriptions) shall be reviewed and approved by the Board Attorney and Board Engineer.
- j. Prior to the issuance of any Building / Construction Permits, the Applicant (or successor Applicants / Owners) shall submit grading, drainage, plot, and utility plans (and drainage calculations) to the Board Engineer, for his review and approval.

- k. The Applicant, or any successor Applicant / Owner, shall comply with all Prevailing Rules, Regulations, Installation, and Hook-Up Requirements of the Municipal Utility Authorities.
- l. Prior to the issuance of any Building Permit, the Applicant, or any successor Applicant / Owner, shall submit detailed Plans / Elevations / Grading & Drainage Details – and the said documents shall be reviewed / approved by the Board Engineer / Zoning Officer (as well as any other applicable municipal officials).
- m. Any single-family homes to be constructed on the newly created Lots shall comply with all Prevailing Bulk Zoning Regulations (as no Variances are granted hereunder.) If Variance relief is required for construction of either single-family home, the Applicant must seek such relief through a subsequent application.
- n. The subdivision shall be perfected in accordance with Requirements of New Jersey Law (and within the timeframe set forth in New Jersey Law.)
- o. The Applicant shall review the proposed Block / Lot designations with the Municipal Tax Assessor so as to confirm the acceptability of the same.
- p. The Applicant (or any successor Applicants) shall comply with all applicable Affordable Housing Rules / Regulations / Ordinances / Contributions / Directives as may be required by the Borough of Sea Girt, the State of New Jersey, C.O.A.H., the Court System, or any other Agency having jurisdiction over the matter.
- q. Any construction / development of the Site (if applicable, and if authorized herein) shall comply with the Prevailing FEMA Requirements.
- r. The Applicant shall comply with all terms and conditions of the review memoranda, if any, issued by the Board Engineer, Construction Office, the Department of Public Works, the Office of the Fire Prevention and Investigation, and/or other agents of the Borough.
- s. The Applicant shall obtain any and all approvals (or Letters of No Interest) from applicable internal / outside agencies - including, but not limited to, the United States of America (FEMA), the Department of Environmental Protection (CAFRA), the Monmouth County Planning Board, the Freehold Soil Conservation District, the local utility offices, the Department of Public Works, the local Fire

Department, and any other agency having jurisdiction over the matter.

- t. The Applicant shall, in conjunction with appropriate Borough Ordinances, pay all appropriate/required fees, taxes, and inspection fees.
- u. If required by the Board Engineer (or the New Jersey Municipal Land Use Law), the Applicant shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.
- 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 Applicant is 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 Applicant and his representatives are not permitted to unilaterally deviate or build beyond the scope of the Board Approval. Thus, for instance, if the Board grants an Application for an existing building / structure to remain, the same cannot be unilaterally demolished (without formal Borough / Board consent), regardless of the many fine construction reasons which may exist for doing so. That is, the bases for the Board's decision to grant Zoning relief may be impacted by the aforesaid change of conditions. As a result, Applicant and his representatives are not to assume that post-approval deviations can be effectuated. To the contrary, post-approval deviations can and will cause problems. Specifically, any post-approval unilateral action, inconsistent with the testimony / plans presented / approved, which does not have advanced Borough / Board approval, will compromise the Applicant's approval, will compromise the Applicant's building process, will create uncertainty, will create stress, will delay construction, will potentially void the Board Approval, and the same will result in the Applicant incurring additional legal / engineering / architectural costs. 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 Applicant and / or his agents shall be deemed conditions of the approval granted herein, and any mis-representations or actions by the Applicant contrary to the representations made before the Board shall be deemed a violation of the within approval.

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

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

**BE IT FURTHER RESOLVED**, that the action of the Board in approving the within Application shall not relieve the 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 any constructed improvement, or for any damage which may be caused by the demolition / development / subdivision.

FOR THE APPLICATION: Carla Abrahamson, Councilwoman Diane Anthony, Karen Brisben, Jake Casey, Mayor Donald Fetzer, Eileen Laszlo, Robert Walker, John Ward, Norman Hall

AGAINST THE APPLICATION: None

NOT ELIGIBLE TO VOTE: Tom Britt, Stan Koreyva (Alternate Members)

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

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

NOES: None

Before addressing the next two Resolutions on Dismissal Without Prejudice, Chairman Hall asked Mr. Kennedy to explain what this means. Mr. Kennedy said this means there is no adverse reaction to it. If it is “denied” the application has to come back with something different but, in this case, they can come back with the same application at a future time. He said that on the first Resolution there was not good feedback on the application and the second Resolution is for one that has been around for awhile and it is not sound practice to keep an application open for a long time as there is the threat of automatic approval.

The Board then considered a Resolution for dismissal Without Prejudice for Block 28, Lot 4, 107 Seaside Place, owned by Diane Rinnovatore. As there were no Board comments or changes to be made the following was presented for approval:

**WHEREAS**, representatives of the Diane Rinnovatore previously submitted a Development Application to the Borough of Sea Girt / Sea Girt Planning Board, with respect to the property located at 107 Seaside Place, Sea Girt, NJ, and more formally identified as Block 28, Lot 4; and

**WHEREAS**, the said Application sought Variance Approval to effectuate the following;

- Demolition of an existing single-family structure; and
- Construction of a new single-family home, with detached garage and patio; and

**WHEREAS**, the said Application was presumably deemed complete, and scheduled for a Public Hearing; and

**WHEREAS**, the first Public Hearing occurred on or about July 20, 2022; and

**WHEREAS**, at the said July 20, 2022 Public Hearing, sworn testimony was presented by the following:

- Diane Rinnovatore, Applicant;
- William Merunko, Professional Engineer and Planner;
- Patrick LaCorte, Architect;
- Mark Aikins, Esq., appearing; and

**WHEREAS**, at the said Public Hearing, Board Members expressed a number of questions, comments, and concerns regarding the Application; and

**WHEREAS**, as a result of the aforesaid questions, comments, and concerns, the Public Hearing was adjourned (until September 21, 2022) so that the Applicant's representatives could consider effectuating certain Plan revisions; and

**WHEREAS**, Plan revisions were, in fact, effectuated; and

**WHEREAS**, the revised Plans were more formally reviewed / discussed at the continued Public Hearing of September 21, 2022; and

**WHEREAS**, at the September 21, 2022 Hearing, sworn testimony was presented by the following:

- Ray Carpenter, Engineer and Planner;
- Patrick Lacorte, Architect; and

**WHEREAS**, after completion of the supplemental testimony presented, and after review of Board Member comments, it appeared that the Board Members were not inclined to grant the requested Variance relief; and

**WHEREAS**, the Applicant's representatives requested a brief recess so that the matter could be more formally reviewed; and

**WHEREAS**, upon completion of the recess, the Applicant's Attorney advised the Board, on the record, that the Applicant decided to withdraw / dismiss the subject Application; and

**WHEREAS**, in light of the above, the subject Application needs to be officially withdrawn / dismissed, without prejudice; and

**WHEREAS**, under New Jersey Law, if an Application is not ruled upon in a timely fashion, there could, under certain circumstances, be an automatic approval of the same; and

**WHEREAS**, an automatic approval of any Application could have a significant and detrimental impact on the site, the neighborhood, and the Borough of Sea Girt as a whole; and

**WHEREAS**, the concept of an "automatic approval" is diametrically opposed to the traditional practice employed by the Planning Board in critically reviewing submitted Zoning Applications; and

**WHEREAS**, an automatic approval would not be in the best interest of the Borough of Sea Girt, or the residents thereof;

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

1. That at the Applicant's request, the specific Diane Rinnovatore Application, regarding the 107 Seaside Place, Sea Girt, NJ property (Block 28, Lot 4) is hereby **dismissed, without prejudice**.

2. That the Applicant shall cause all outstanding escrow charges (and other appropriate charges) to be satisfied in full.

3. That the Board Secretary, Board Attorney, and Zoning Office Representatives are hereby authorized to take all reasonable actions necessary to effectuate the intentions of the within Resolution.

4. That a certified true copy of the within Resolution shall be forwarded to the following:

- A. The Applicant;
- B. The Board Attorney; and
- C. The Borough's Zoning Office

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

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

NOES: None

The last Resolution for approval was a Dismissal Without Prejudice for Block 23, Lot 6, 116 Baltimore Boulevard, now owned by Paul Cerami. As there were no changes to be made the following was presented for approval:

**WHEREAS**, agents of Paul Cerami, previously submitted a Development Application to the Borough of Sea Girt / Sea Girt Planning Board; and

**WHEREAS**, the said Application was submitted with respect to the property located at 116 Baltimore Boulevard, Sea Girt, NJ, and more formally identified as Block 23, Lot 6; and

**WHEREAS**, the said Application sought Approval to effectuate the following:

- Demolition of an existing single-family home; and
- Construction of a new single-family home; and

**WHEREAS**, the said Application was deemed complete and scheduled for a Public Hearing; and

**WHEREAS**, the first Public Hearing on the matter occurred on or about July 21, 2021; and

**WHEREAS**, at the said Public Hearing, formal appearances were entered by the following:

- Mark Aikins, Esq., on behalf of the Applicant;
- Kevin Asadi, Esq., representing Objectors Vic and Chris Fontana; and

**WHEREAS**, at the conclusion of the first Public Hearing, the Hearing was continued until on or about September 15, 2021; and

**WHEREAS**, the September 15, 2021 Public Hearing was further carried / adjourned, as a result of the Applicant's intention to consider whether any aspects of the Application / Plans should be revised; and

**WHEREAS**, despite multiple written and verbal requests for information on the status of the Application, revised Plans have not been submitted; and

**WHEREAS**, it has been more than 1 year since the conclusion of the first Public Hearing; and

**WHEREAS**, based upon the known / prevailing circumstances, it appears that the Application is not being prosecuted / pursued; and

**WHEREAS**, in light of the above, the subject Application needs to be officially withdrawn / dismissed, without prejudice; and

**WHEREAS**, under New Jersey Law, if an Application is not ruled upon in a timely fashion, there could, under certain circumstances, be an automatic approval of the same; and

**WHEREAS**, an automatic approval of any Application could have a significant and detrimental impact on the site, the neighborhood, and the Borough of Sea Girt as a whole; and

**WHEREAS**, the concept of an “automatic approval” is diametrically opposed to the traditional practice employed by the Planning Board in critically reviewing submitted Planning Applications; and

**WHEREAS**, an automatic approval would not be in the best interest of the Borough of Sea Girt, or the residents thereof;

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

5. That, as a result of apparent lack of prosecution, the specific Paul Cerami Application regarding the 116 Baltimore Boulevard, Sea Girt, NJ property (Block 23, Lot 6) is hereby **dismissed, without prejudice**.

6. That the Applicant shall cause all outstanding escrow charges (and other appropriate charges) to be satisfied in full.

7. That the Board Secretary, Board Attorney, and Planning Office Representatives are hereby authorized to take all reasonable actions necessary to effectuate the intentions of the within Resolution.

8. That a certified true copy of the within Resolution shall be forwarded to the following:

Wednesday, October 19, 2022

- A. The Applicant;
- B. The Applicant's Attorney;
- C. The Objecting Attorney;
- D. The Board Attorney; and
- E. The Borough's Zoning Office.

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

AYES: Councilwoman Diane Anthony, Karen Brisben, Jake Casey, Stan Koreyva, Eileen Laszlo, Robert Walker, John Ward

NOES: None

NOT ELIGIBLE TO VOTE: Mayor Don Fetzer, Norman Hall

#### NEW BUSINESS:

Chairman Hall moved the agenda around and the first application to be heard was a Site Plan application for The Parker House, 8-12 Beacon Boulevard, Block 14, Lot 9, to allow construction of a retaining wall in excess of 1 foot around Beacon Boulevard and points on First Avenue. Change in Grade – 1 foot permitted, 2 ½ to 3 feet proposed. Also, installation of one new door and reconfiguration of existing door for fire access.

Mr. Kennedy said this has a unique procedural history, some involving the Planning Board and some not. It is a pre-existing, nonconforming seasonal use in a Residential Zone; sometimes there are problems and this has resulted in litigation between the Parker House, neighbors and the Borough but not the Planning Board. An opportunity to settle has arisen and is always a good thing; there are settlement terms being discussed and one part of this involves increasing the width of the sidewalk in front of the Parker House, the idea is to give pedestrians for entering & exiting the Parker House more space, give a more visible path to follow so there is no trespassing into adjacent properties, it will improve safety; he wanted to be sure the Planning Board knows this is a Council issue and no formal Planning Board review is required. The Borough is considering an agreement on this and the Planning Board gets involved as the sidewalk widening will require a retaining wall to be constructed and the grading will change, this needs Planning Board approval. The retaining wall requires Site Plan approval and this kind of change in grade also has to be reviewed by the Board under our Ordinance, this from the Borough/Board Engineer and is done through a public hearing. Mr. Kennedy said he has spoken with the Borough Attorney, Borough/Board Engineer and Board Chairman and felt he was up to date on this matter, but wanted a disclaimer if he did not say something right and

his comments do not supersede the litigation. Agents of the Borough have endorsed the settlement of this litigation but Mr. Kennedy said that does not mean the Planning Board has to, this is an application before the Board and has to satisfy all the requirements of the Board for Site Plan review with no variances.

He then asked if anyone who had received a notice has any questions or concerns on the notice and there was no response. He then said he and the Board Secretary had reviewed the notice and all was in order so the Board has jurisdiction to hear this. Mr. Kennedy then marked the following exhibits:

- A-1. The application package.
- A-2. Site Plan done by KBA Engineering, dated 9/19/22.
- A-3. Architectural Plan done by Paul Damiano, dated 9/21/22.
- A-4. Survey done by Aker Survey Co. dated 11/13/14, revised 10/5/2015.
- A-5. A memo from Chris Willms, Fire Prevention Officer, dated 10/6/22.
- A-6. A review memorandum from Board Engineer Peter Avakian, dated 10/4/22.
- A-7. A copy of a Resolution from the Sea Girt Planning Board dated 5/20/2015.

At this time the Board Engineer, Peter Avakian, was sworn in. Michael Rubino, Esq. then came forward to present this application. He wanted to clarify that several years ago there were two Boards, the Planning Board and the Board of Adjustment and they have now merged, so any older applications would have come before the Board of Adjustment; they are here tonight for Site Plan approval before the Planning Board, this agreed upon by the Board Attorney, Board Engineer and him.

There was a lawsuit by 3 people against the Parker House and the Borough for a number of issues and there is a proposed settlement of that lawsuit, which deals with a taxi stand on the corner of Beacon Boulevard and First Avenue; First Avenue is a County road so they have to deal with County approval. In making the sidewalk larger they have to cut into the bank and make a change in the grade which is why they are here tonight. Also, for safety purposes, there are steps on Beacon Boulevard and they want to open up the doorway to the west of the steps for Fire Company access and they want to let the Planning Board know this, it is not a Planning Board issue but he wanted to let the Board know. To the east side of the stairs there is an opening to go into an 8x10 foot cubicle that leads into a storage area and the bar downstairs and they would like to also put a door there. This would make deliveries to the bar much better and, if there was an emergency downstairs, it would help the patrons to get out.

The main concern is to get a taxi stand on Beacon and First, they have met with the County as well as Roger McLaughlin, attorney for the neighbors in the lawsuit, but the hearing did not go that well and they are still working on this with the County. They felt that to get Planning Board approval for the wall and change in grade done is part of this and they are here tonight to do this while they are trying to work things out with the County.

Chairman Hall asked how many witnesses Mr. Rubino had and was told 3, Joe Kociuba of KBA Engineering, Paul Damiano, Architect and Shane Matthews, son of one of the owners. Mr. Rubino also stated the owners of the Avon Hotel Corporation: Michael Wright, the Estate of John Pandolfe who passed away this past March, and Frank Matthews. Before proceeding, Mr. Kennedy asked if any Board members had any conflicts with the names read and there was no response. At this time Joe Kociuba, Engineer & Planner from Manasquan, Paul Damiano, Architect from Spring Lake Heights and Shane Matthews from Sea Girt, whose father is one of the owners, were all sworn in. The Board accepted them all as expert witnesses. On a question from Mr. Walker, Mr. Rubino again said their intent is to start this procedure, they may have to modify things but they want to get started.

Mr. Kociuba showed Sheet 1, the layout plan submitted as Exhibit A-2. This shows the Taxi Stand and, since the County meeting, there have been changes made and he had Exhibit A, a layout grade plan dated 10/18/22 which was marked as Exhibit A-8 and given out to Board members. Mr. Kociuba had a second grading plan marked as Exhibit B dated 10/18/22 and that also was given out and marked as Exhibit A-9. Mr. Rubino also had a picture board with 5 pictures on it of the area of concern that he took, this was marked as Exhibit A-10. Mr. Damiano had an illustrated architectural rendering of Exhibit A-3 dated 9/21/22 and this was marked as Exhibit A-11. He also had two pictures, one of the stairs down to the vestibule in the basement they want to remove and the other side of the stairs, a picture of the fire connections and proposed door; this was marked as part of Exhibit A-11.

Mr. Kociuba said they are seeking Site Plan approval and showed the original Site Plan submitted, no variances being requested and no expansion being done. They had originally proposed widening the road 4 feet, they had met with the County had they had concerns on doing this. As a result of this, they came up with Exhibit A and Exhibit B, Exhibit A is their Wish List, this is what they hope to get approved by the County. They are proposing, starting from the south corner, to address an existing retaining wall that is there today, replace that wall with kind, but with new material as the wall is in disrepair. Moving further north, the stairs that access the Parker House on First Avenue are also in need of repair and will be replaced as well; they are going to replace the sidewalk on the First Avenue side and they want to widen the sidewalk North of the stairs as well on the First Avenue side, he noted they want to save the tree that is in this area and the County requires it, so the retaining wall is being proposed to bump out to save this tree. Then they will expand the walkway to about 8 feet wide

with the retaining wall which will be about 28 inches high and can be used as a seat wall, he said Disney World has them everywhere, this will provide a walkway into the existing hill into the Parker House, a grade change, but will be a place to sit. That expansion will continue around the northwest corner with the retaining wall and then tie into the building. There will be two benches flanking the stairs providing additional seating and aesthetic improvements and this will separate the retaining wall from the building.

Mr. Kociuba went on to say there is a cubby entrance to the east side of the stair for access to a storage area and they want to put a formal door there, this does not require Site Plan approval but the change in grading to do this does and this will provide nice easy ground access to the Parker House. They also want to expand the sidewalk through that area for better access. Lastly, they want to put in bollards on the Beacon Boulevard curb line to protect patrons. The difference between Exhibit A and what was originally submitted was they did expand the sidewalk some to the driveway to provide added area for patrons. The retaining walls east of the stairs will tie into the driveway, which is steep but is not being changed other than changing the apron in front. On the very east side of the driveway they are putting in a matching wall, they don't want to invite people here to sit due to the neighbor's home next door so they are going to put in landscaping here, it won't be a seat wall but they do want to balance the aesthetics. The County's concern is that they do not want a taxi stand in their paving way, not only the existing lane but also the shoulder, they want everything off the curb. The applicants would have to substantially push into the property then and have more of a grade change, the retaining wall would have to get taller, at about 4 feet and it would change the aesthetics. This also could have some construction implications on the porch area, this is untenable to agree to and they are continuing to try to work the County and continue to do what they have been doing for the last two summers. They are hoping to come to a reasonable agreement at a later date with the County.

He then referred to Exhibit B, the intent here is that should the County not let them do the retaining wall as shown on Exhibit A, they will ask for approval of Exhibit B from the Board for that retaining wall. The only difference is there will be no retaining wall in the First Avenue Right-of-Way and they would replace the current sidewalk in its current width with no expansion. The retaining wall will be stopped short of the First Avenue corner, everything on Beacon will still operate the way it has been, not changing anything that doesn't already exist.

The Site Plan approval is for the site, the retaining walls will go to 4 feet where they meet the building and they want to work with the existing grades. He referred to the Fire Prevention letter he received and the one item that will change the retaining wall is the Fire Official wants the standpipe to be relocated, right now it is about 7 feet east of the stairs so they would have to turn the retaining wall east of the stairs for access and that is not shown on the Exhibit. Mr. Rubino read part of the Fire Official report and agreed with all on this report, it will be done. Mr. Rubino noted that, although the capacity of patrons does not

change, the new overall exit capacity will be for over 900 patrons. This reconfigured exit passageway provides for a safer egress in case of emergency, this is the reason for the doors.

Mr. Rubino also wanted it on the record that he did notice for two variances as he wasn't sure but there are no variances necessary. He then went on to Mr. Avakian's letter and agreed with all the comments, A through D are informational, E is why they are here this evening for approval from the Board, a 4 foot grade change at the maximum, the note that the County approval is needed, a comment of the need of a bluestone percolation trench which Mr. Kociuba said will be done and the conditions of approval are acceptable and will be done.

Next to come forward was Paul Damiano, Architect, who started by stating the occupancy is measured by the size of the building, two exits needed if 500 or less and three exits needed if over. One of the exits goes up stairs and then down stairs, so if they can open the grade to allow access straight through, it makes an easier egress to get out, this is not to get in. For the westerly entrance which is closer to the Fire equipment, Mr. Willms asked for the connection to come down to the doorway and put a keybox there so the Fire personnel can come in and get a hookup, a higher level of safety; this westerly door is limited to this and not access for patrons. Going back to the easterly door, putting in a real door will help with the aesthetics as well, it will have a brick veneer.

The next person to speak was Shane Matthews, the son of one of the owners, Frank Matthews and Shane does work for Avon Hotel Corp. The intent is to get approval and start on the improvements and work with Mr. McLaughlin to resolve other issues with the County, recognizing there may have to be another appearance before the Board. Mr. Matthews said the sprinkler room is where the new Fire door will be, right now they have to go all the way around the building to get access, this will now be right there for them to access this area. Mr. Matthews said there is security there in the evening to protect this. The deliveries that are made also now have to go all the way to the back of the building and then back again inside and the new door to the east of the stairs will make these deliveries be more direct, their time will be cut in half if not even less. The patrons will not enter this area, this is for emergency access only and there will be no increase in capacity.

Mrs. Brisben, as Secretary, questioned the plans and what is the Board being asked to be approved as there is Exhibit A and Exhibit B? Mr. Kociuba wanted Exhibit A to be approved but if the County does not allow what they want to do, then they do have the ability to go to Exhibit B. Mrs. Brisben asked Mr. Willms if he understood this, and he did, and she then asked Mr. Avakian who also understood it but was a little concerned about Plan B as they don't know what the final position of the County is going to be, so the Board can certainly reserve their right to have the applicant come back and advise of a plan revision. Mr. Rubino had no objection of submitting Plans to Mr. Avakian for approval and

if there are any questions then he can decide if they have to come back to the Board. Mr. Kociuba said that Exhibit B will be approved by the County; Chairman Hall felt that the Board should approve Exhibit B and then if the County approves the changes requested then Exhibit A can be implemented with a possible return to the Planning Board if Mr. Avakian has any concerns.

Mr. Avakian was okay with this and wanted to remind the Board that the testimony was that the retaining wall comes out from Beacon Boulevard south to the stairs. He agreed with the other professionals he had met with on this matter, it is a difficult one, the grade change by the Ordinance allows him to make a determination and he doesn't like making it and that is why they are before the Planning Board; he also commented this perhaps is another issue to be looked at by the Ordinance Review Committee as he felt it is the Planning Board that should be deciding this. Also, the retaining wall does not require any variances and comes under the Site Plan. Really, what is happening is a substantial grade difference between the finished floor of the building and the sidewalk. Because of that grade change, in order to widen the sidewalk, the grade change would have to go into the slope of the porch and, coming into that slope, one can't just take out 3-5 feet without perhaps damaging the structural support. Everything that is proposed is correct in the engineering sense and he was glad to see some drainage being put in and would like to see detail of the wall; Exhibit B does not propose a retaining wall from Beacon Boulevard south to the stairway on First Avenue, Mr. Kociuba said maybe about 75 – 80 feet. Mr. Avakian said that, in Exhibit B, the sidewalk improvements will not be as wide as proposed and there is no change of the grade from the sidewalk to the building.

Mr. Kennedy asked Mr. Avakian's opinion on coming back or not coming back before the Board. Mr. Avakian said he may want it to come back before the Board, it is up to him and he is involved with the County, he would feel comfortable in coming back to the Board; he said that the applicant has been very helpful in working on this.

Mr. Ward asked about the bluestone drainage material and the wall, will there be a chance of impacting the neighbors and the answer was no, no impact on drainage. Also, this will look like a seat wall and not some large architectural structure, it will blend in. Mr. Kociuba also said this will be brought in the construction detail and will show the grade change and runoff. Mayor Fetzner asked about the stairs on both Beacon Boulevard and First Avenue, they both seem to go over the property line. Mr. Rubino commented that the First Avenue belongs to the County and the Mayor agreed that may have happened. He also felt the Board has to be flexible about Exhibit A and B and Mr. Rubino agreed with him, there are a lot of moving parts but at least they can start. Mr. Casey had a question on the agreement and Mr. Rubino said a formal agreement has not been entered into as yet due to issues, they hope to have everything in place by the Parker House opening in the spring of 2023. The basis of the agreement is to get the taxi stand in so the Ubers and taxis can get in more quickly and, part of that doing that, creates an issue of getting people to the taxis so they want to

expand the sidewalk; to do all this it was felt that to come to the Planning Board to at least get this part addressed as well as the Fire access, which is not the Planning Board, but they wanted this to be known as well.

As there were no more Board questions, the hearing was opened to the audience and Catherine Metcalf of 103 Ocean Avenue came forward and did not understand the exit capacity. Mr. Kociuba said this number is used to show they can release patrons in a faster way, the capacity is not being changed. Ms. Metcalf said the capacity was under 1,000 20 years ago but now they say it is 1,264. She asked if the Planning Board and/or Parker House say the capacity will not go past 1,264, she sees an increase in capacity. Mr. Kennedy, at this time, swore her in. Mr. Rubino said whatever the capacity is, it is, and whatever it is will not be exceeded. Ms. Metcalf wanted it on the record that she was concerned with the capacity and because there is a higher exit way; Mr. Rubino says this door will mean you can get people out faster in an emergency, no expansion of the use of the premises. Ms. Metcalf says she has seen the capacity increase with chairs and tables on the west deck, from under 1,000 (she thought 962 or 982) to 1,264. A shuffleboard table was put in and she felt that added to the increase and said she had spoken to then Mayor Farrell who felt this had happened. Mr. Rubino said he did not have information on this and Chairman Hall told her this is not relative to what the Board is addressing tonight.

Ms. Metcalf then asked if it is necessary for people to be seated on this wall, can't it be 18 inches? Mr. Kociuba said it works with the widening of the sidewalk and they took that under consideration, if they can widen the sidewalk this will be more aesthetically pleasing, this is where that choice came from. Ms. Metcalf felt it will make it more seating and she was concerned for the neighbors after 10:00 p.m., do they really want people sitting outside and would the wall at 18 inches work? Mr. Kociuba said the walkway expansion would have to be less and people would sit on an 18-inch wall as well, Mrs. Metcalf was not sure about that. Her next question was support for the taxi stand but she was concerned with issues of impervious surface by this increase of 225 feet of the retaining wall. Mr. Kociuba said there will be an increase of impervious coverage on the right-of-way and a negligible increase on the property. There will be a drywell behind the wall that will capture the runoff, clean stone. Mrs. Metcalf has a video from 2021 when the Parker House added gravel and that summer there were very heavy rainfalls and a lot of runoff into Beacon Boulevard, she wanted that known and she does have the film if the Board ever wants to see it.

Mr. Walker asked about the expansion for the taxi stand and Mr. Kociuba said it will expand the pavement on the First Avenue side, the pavement will be widened and the curb line removed and shifted if the County approves it. Mr. Rubino then summed up and felt this was reasonable and asked that the Board look favorable as this will help with the Parker House problems, provide fire exit for emergencies, the sidewalks will be approved and if they can be widened it will help with crowd control.

At this time the hearing was opened for comments from the audience and there were none; Chairman Hall asked if anyone on the Board had comments and there was no response so Mr. Kennedy summarized the application for the Board. He asked Mr. Kociuba about Option A and Option B, there was a lot of testimony, he confirmed that Option A is Exhibit A-8 and Option B is Exhibit A-9 and that is correct. Option B is to be approved first with Option A being pursued in good faith to get approval from the County Planning Board. If they get approved by the County they will then go with Option A. They will also comply with Mr. Avakian's report and all outside approvals and testimony given. Mr. Kennedy said he did get an email from Dennis Lauzon's attorney, one of the neighbors in the lawsuit, stating some issues seem to be outside of the settlement, referencing the doors; he did speak with Nicholas Pelligrino of that firm and he said the Site Plan is slightly different, he is not objecting to it but it is different. He just wanted this on the record; Mr. Rubino said that some of the things they are asking for are outside of the agreement, such as the Fire Doors. Mr. Kennedy then went back to the conditions of the Resolution and went over his "boilerplate" statement, compliance with the Fire Prevention memo, compliance with the change in grade as per testimony, 5 sets of accepted plans will be submitted to the Board Secretary, drainage system to be shown and holding the Borough harmless from any encroachments. Mr. Rubino agreed with all that was said. Mayor Fetzer added that the Borough Council endorses this work to be done. Mr. Ward asked if this settlement process does not occur, where do we stand, does this hang out for the next 3 years? Mr. Rubino said they want to start work and, if need be, they will go with Option B.

At this time Mrs. Laszlo made a motion to approve this application, as presented and with the conditions noted by Mr. Kennedy, seconded by Mrs. Brisben and then by the following roll call vote:

Ayes: Councilwoman Diane Anthony, Karen Brisben, Jake Casey, Mayor Don Fetzer, Stan Koreyva, Eileen Laszlo, Robert Walker, John Ward, Norman Hall

Noes: None

Mr. Kennedy had a Resolution ready for approval this evening, but realized there no longer is a time issue as the County has not approved this and Mayor Fetzer felt it should be on the agenda for next month so the Board can review it; the Board agreed it will be considered at the November 16<sup>th</sup> meeting.

The Board then turned to an application for variance relief for Block 22, Lot 11, 106 New York Boulevard, owned by Matthew Martin & Sharon McGarvey, to allow construction of a new home. Maximum Building coverage – 20% allowed, 20.44% proposed. Front Yard Setback – average on this block is 33.2 feet, existing is 23.5 feet, proposed is 24.37 feet.

The correct fees were paid and the property owners within 200 feet as well as the newspaper were properly notified. Mr. Kennedy asked if anyone in the audience had issues with the notice they received and there was no response, he said he and the Board Secretary had reviewed the notice and the Board does have jurisdiction in this matter.

Before starting the testimony Mr. Kennedy marked the following Exhibits:

A-1. the application package.

A-2. Variance plan done by KBA Engineering, dated 7/11/22.

A-3. Architectural plan done by Graham Station Architects dated 6/28/22.

A-4. Survey done by Charles O'Malley dated 5/11/22.

A-5. Memo from Leon S. Avakian, Inc., dated 10/4/22.

A-6. Supplemental Sheet of a site diagram which was prepared by the Architect, Richard Graham.

At this time Peter Avakian, Board Engineer, was sworn in. Mr. Middleton then presented an Architectural Rendering of the proposed home, done by Richard Graham, Architect, and that was marked Exhibit A-7. Joe Kociuba of KBA Engineering also had two exhibits, one is an illustrated copy of the variance plan, done in color detail and shows the change in grade and was dated 7/11/22; this was marked as Exhibit A-8. He then had a photo board with 12 photos, done today, and that was marked at Exhibit A-9.

At this time the following were sworn in: Joe Kociuba, KBA Engineering, Manasquan, NJ, Planner & Engineer; Richard Graham, Brielle, NJ, Architect and Planner; Karen Martin, 102 New York Boulevard, neighbor; Kathleen Matheson, 104 New York Boulevard, neighbor; Sharon McGarvey, 106 New York Boulevard, one of the applicants and owners (Mr. Martin was not able to attend due to illness).

Mr. Tim Middleton, Esq. presented the testimony and said they are here to request approval for a new 2 ½ story residence, the applicants have lived here since 1999 and they went back and forth with either renovating the existing home or building a new home and they ultimately determined the renovations would not be feasible so they are proposing a new home. Two variances are being requested, building coverage requirement is 20% and they are asking for 20.36%, or 27 more square feet. He noted the home itself complies with the zoning and the 27 square feet is from a landing area in the rear which is 23 square feet and two stairs which comprise 4 square feet, this area is over 16 inches in height so has to be included in building coverage. He went on to say that this is a hardship variance, the property has a high-water table which is unusual in this area. Sea Girt passed an Ordinance requiring the bottom of the

basement floor be two feet above the seasonal high-water level. The applicants would like a basement so the house has to be raised which creates the back landing area that is over coverage. The second variance is for the building setback. In this particular block there are 9 separate properties, 3 to the west are between 47 to over 40 feet; the 4 to the east are between 25 to 28 feet frontage and there is one that faces First Avenue on the corner of New York & First Avenue that is at 36 feet. They are asking for variance for 24.36 feet frontage with 28 feet to the dwelling. The neighbors on either side are here to stated they want the front yard setback to stay to fit in this part of the block, the existing home is 23.5 feet. This will alleviate a checkerboard effect as the homes on either side are now within the front yard setback as well.

At this time Sharon McGarvey came forward and apologized for her husband not being here due to illness. She said her husband has ties to Sea Girt and for 28 years lived at 228 Beacon Boulevard, they purchased this home in 1999 and spent summers here, they are eager to be full time. The existing home is in disrepair and they would like to rebuild and still be in line with the existing homes that are there now and not be pushed back, which she felt will affect the light in front of the house. They worked with Mr. Graham on a design and worked on this for at least two years, she again emphasized they want this to fit in the neighborhood; they are proposing a basement for laundry, storage, etc. Some of the other homes have issues with water in the basement so theirs will be raised up.

Mr. Richard Graham, Architect, then came forward and agreed that they have been involved with this for over two years. He is very familiar with Sea Girt and has built over 50 homes here. He designed this home to keep it in the nature with the other homes; he has renovated many homes but this existing home is not a candidate for renovation and the obstacle he encountered was the Front Yard setback and saw the need for Planning Board approval. The average setback here is 36.9 feet and this home now is 27.2 feet and they have a proposal of 28 feet.

Mr. Graham then presented a chart, Exhibit A-6, that illustrates the goal to repeat the setback for this home. 102, 104, 106 and 108 setbacks are at 25 feet, 26 feet, 28 feet and one on First Avenue at 36 feet, 110 is more than 40 feet back and the rest of the block exceeds 40 feet. He wanted to show that 102, 104, 106 & 108 are the ones not at the 40-foot setback and he showed this on the chart he to see these align with one another. He also added that, in the design of the proposed home he tapered back the front, side and in the height as well. In referring to Exhibit A-7, the rendering, he showed the dimensions of the proposed home, so in total the main floor is at 28 feet and the half story will be over 10 feet 4 inches more back, this is not a straight front home and is tapered back for light, air and open space. There is no benefit to require the home to be back to the average setback as it will diminish the light and air to the front of the home as well as the front and back of the neighbors. In terms of the intentions of the Municipal Land Use Law it speaks of the goal of light, air and open space and

a good environment and good civic design and streetscape. It is a better presentation if the home is not set back to the average of 36 feet, this area is a mini block onto itself and is an unusual situation.

The overage of building coverage is due to the landing issue and two steps. This is a result to comply with two feet above the seasonal high-water requirement. The 7 foot 8 inch high basement is proposed and the minimum height required is 7 feet which he did not recommend as the extra 8 inches gives space for a vinyl floor, ductwork along the ceiling and gypsum material for the ceiling. The basement had to come up out of the ground more and this meant the landing and steps in the back of the home were over 16 inches and have to be included in building coverage. They did attempt to be compliant and the actual footprint of the first floor is 1,479 square feet where 1,500 square feet is allowed. The second floor is 1,490 square feet and again 1,500 is allowed, so basically the footprint of the home complies.

The next person to come forward to testify was Kathleen Matheson of 104 New York Boulevard, the next door neighbor, who said she agrees with the proposed setback. In her back yard there is an outdoor shower and they will lose that privacy in the back yard if the home were farther back as well as being compromised on the open air and sunlight.

The next person was from 102 New York Boulevard, Karen Martin, two doors east, and she also asked that the setback be kept the same, it will look better this way. She wondered why the setbacks changed, Chairman Hall said it has been that way for 50 years and Mr. Middleton added that they are on an average setback street.

The next professional to testify was Joe Kociuba from KBA Engineering, Engineer and Planner. This is a conforming interior lot in the 1E Zone that does have a 1 ½ story dwelling on it now, it has a front setback of 27.2 feet and 23.5 feet with the stoop. There are 9 homes along this frontage and the two on the corner had to be used for the average setback, 4 of the homes are within the 28 foot setback range. The two on either corner actually face the Avenues but had to be included in the average setback requirement with their side lots, the majority of the lots are in the 26-28 foot range.

The existing grading is at elevation 12 and 13 in the back and the high water table is at 6 feet below grade so they had to go 4 feet below grade for the basement, no more. He referred to Exhibit A-8 and showed the areas of concern, stating this lot is extremely flat, the front is at 11.6 feet, the grade at the front stoop is 11.85 feet and the front door is around 12.5 feet. Also, at the bottom of the front steps is a hole about 2 inches deep and the difference from there to the curb is only about 2-3 inches, no grade change on this property. The homes here are old and the lot was level from the front of the property to a retaining wall that exists about 2/3rds of the way back and this lowers the grade from what exists in the back yard to the patio. There is only 4 inches of grade

change from the front of the property to the retaining wall, this is a pancake. The neighbor to the west has a block wall and is graded in a better fashion, this lot does not and that is why the Ordinance says if there is a grade change of more than 12 inches it has to come before the Board and there is a 16 inch wall here; if they fill that to level the property it requires the Board approval. He then spoke of the grade in front of the home as well the need to improve the drainage here. The home to the east is also a home on a flat lot, the other lots are more elevated and perhaps built before the change in grade Ordinance came into being and have better pitch. With the raised basement the first is required to be elevated as well.

Mr. Kociuba said there also is an existing, nonconforming shed in the back yard that will be removed. He then showed, on the rendering, the front stoop and steps and the back. He had three pages of photos, same as Exhibit A-9, to distribute to the Board members and Mr. Kennedy marked these as Exhibit A-10. He described the photos of the other homes to show the Board, and said there will be a new driveway, pool & patio, the applicants wish to retire here. He felt there were hardships here due to the water table, flatness of the lot, etc. The finished floor is elevated which created the elevated stoops, if they didn't have the retaining wall and the back yard was not in a "hole" they would not need the regrading. They can't raise it any more than what they propose as it would then affect the neighbors who are also low. There is a small landscape wall that is being proposed, under 1 foot tall, to allow the driveway to drain out. This is all a big balancing act, with every change affecting another change but ultimately it is the water table and flat grade that creates this issue. The highlight on Exhibit A-8 was to show the grade change areas and he showed that again, where the back patio and driveway will be. He said all this will benefit the property and keep any drainage off the neighbors' properties, it will drain to the street.

All the rest of the proposal complies with the Ordinances as well as the Impervious Coverage, the height complies, sidelines comply, the pool and patio as well as the water table requirements, as per the Board Engineer's report. So they need only two variances, Front Yard Setback and Building Coverage; he felt they can be granted under both the C-1 and C-2 criteria. Under C-1 there is the effects of topography and water table, the Front Yard Setback staying in line affects the neighbors and will keep the neighbors' privacy that they have now, if the home were set back they would be looking into the neighbors' back yards, all this creates a hardship. As far as the C-2, the Flexible C, this promotes zoning, the benefits outweigh the detriments, there is no detriment to the public good and there will be new drainage, as well as promoting light, air and open space and this will keep a uniform streetscape. He also added that he believed the "average setback" Ordinance was created for situations like this, to keep the homes in line.

It was now time for Board questions and Mrs. Brisben had two for Mr. Avakian. She asked him to explain about the parapet railings two feet above the ridgeline as this will make the home over 35 feet high. He said the mechanical

equipment can be on top of the home, surrounded by railing and can be two feet above the ridgeline. There are two Ordinances that control this, the building height is measured and, in this case, it complies; above that is a two-foot parapet wall and this is where the mechanical equipment is housed with decorative railing and this definition is explained in the half-story information. To find all this you first have to go to the Schedule of Limitations for building height and then to the ½ story definition to find out that you can put a parapet wall up two feet above the height, the Ordinance allows this. Mrs. Laszlo noted that this is not appreciated on accessory structures, as has been stated tonight, but this alternative takes this out of the equation by putting them on the roof. Mr. Avakian said if they wanted to put this on the garage, the mechanical equipment would be considerably closer to the neighbors than putting it on the principal dwelling.

Mrs. Brisben also wanted to know if Mr. Avakian was satisfied with the drainage proposed. Mr. Avakian said it has been seen on a few properties in Sea Girt, the center of the lot is either flat or lower than the road and it is really a function of developing the lot and impact on neighboring properties and it has been said this will have no impact on them. He was a little concerned with the retaining wall on the east side simply because it looks like the neighboring property may grade towards this location and he asked Mr. Kociuba if he proposed any drainage provisions in this area, he knew there was in the front but how about the northwesterly direction. Mr. Kociuba said they can do that and can do a stone trench similar what was spoken about the Parker House wall. Mr. Avakian said he was speaking of the wall to the west side of the driveway, the intent is to allow for the property to be elevated and not have a grade impact on the neighboring lot but what they practically have is that any flow that comes to that wall now may sit adjacent to that wall and may create a ponding condition, he certainly recommended something be done in this area. Mr. Kociuba said they can put in weed poles or a zip drain in front of the wall to capture the runoff to the east of the wall. He said the wall is only 1 foot tall and tapers to nothing at the front of the property, they asked to elevate the driveway slightly to allow it to drain out to the front, right now it pools and backs up, they are trying to fix this pitch.

Mrs. Laszlo asked if that homeowner affected by this was here before and Mr. Middleton said yes, she was one who asked for approval of this application. Mr. Ward said he would have liked the neighbors to stay around for questions, but they had left, he wondered if they had basements in their homes and if they had sump pumps. Mrs. McGarvey answered and said she has been in the basement of 102 New York and they did not have water from Hurricane Sandy, the other neighbor does not have a basement, has a crawl space; 108 does have a basement, it was built in 2003. Mr. Ward then questioned the height being 37 feet and Mr. Kociuba said that was correct but it is compliant and allows the mechanicals to be out of view, the peak of the gable on the left side is close to 35 feet, the flat part of the roof is at 33 feet tall and will have screens that are 4 feet tall, and are permitted in the Ordinance. The mechanicals will actually sit down

in that area and will be totally out of sight. Mr. Ward still felt this may be a variance issue as it will be over 35 feet.

Mr. Ward then asked about the hardship spoken about and how is a water table a hardship? Mr. Middleton said the issue is due to the grade and groundwater problem here due to the high groundwater level. The back yard is not even flat but actually indents in parts and all this causes the back landing to be raised; it is up to the Board to decide on the grading issues but they feel it is a hardship. Mr. Ward then asked if the mechanicals can be on the ground due to the property being the impervious coverage requirement? Mr. Middleton said where the mechanicals are will be as far away from hearing them as can be, if they are on the ground they will be closer to the neighbors. Mr. Ward asked about the trees, it is not shown on the rendering and he asked about them. Mrs. McGarvey said there are holly trees and a large apron tree, Mr. Middleton could not answer this question.

Mayor Fetzer asked about the sound attenuation regarding the mechanics on the roof and Mr. Kociuba said there will be screening on all 4 sides, no concerns as this is elevated as well as screened. Mayor Fetzer then asked about the retaining wall on the east and the side door by the driveway, what does that do for driveway access? Mr. Kociuba said the driveway will be narrower there but the primary parking will be in the back. Mayor Fetzer then asked about the excavation for the foundation, especially on the west side, is that being addressed? Mr. Kociuba said that Chris Willms has them well trained to show this on the plans and it will be further identified through construction. Mayor Fetzer asked if they looked at getting to the 20% building coverage and Mr. Kociuba said they were balancing a couple of Ordinances, they have very limited height to work with, the minimum for the basement is 7 feet and if they did this it would impact the ceiling work and mechanicals and would be at 6 feet 8 inches which is not habitable under the Uniform Construction Code.

At this time Chairman Hall noted it was getting late and the Board was going to have to focus on the facts more, Mr. Middleton offered to carry but Chairman Hall felt the people who have been waiting to speak should be allowed to make their comments but there are still questions from the Board. Councilwoman Anthony commented they are starting with a clear slate as far as grading, is there any way, other than what has been testified to, to address the drainage from an engineering perspective. Mr. Kociuba said "not really" and added they have addressed all the concerns, it is the back yard patio that is set so low that limits them and they are making this match with the neighbor to the west and tapering it to only one foot to the east, they are trying to put it back to where it should have been.

Councilwoman Anthony then asked if she can ask Chris Willms, who was in the audience, a question and he came forward and was sworn in as Zoning and Code Enforcement Officer. She questioned the mechanicals that will be up on the roof, do any other homes in Sea Girt have this? Mr. Willms said yes, on

the 300 block of New York Boulevard and one on Chicago Boulevard, it is rare, the new norm is putting them on the rear accessory structure. Councilwoman Anthony asked if they exceed the height and he noted that one of these does exceed 35 feet with the same thing, a parapet wall. Mrs. Laszlo noted it is on the roof of her garage as well. Mr. Willms added that there are Widow's Walks and Cupolas also around town and they can be two feet above the ridge line.

Mr. Casey asked what mechanicals are planned to go on the roof and Mr. Kociuba said condenser and generator. Mr. Casey asked about access and was told it will be a standard staircase and it is shown in the architectural plans.. Mr. Casey asked if there will be any equipment in the setbacks, such as pool equipment and the answer was no, they are not asking for any relief for that.

As there were no more questions from the Board the hearing was opened to the public for questions or comments and James Rotolo of 103 Baltimore Boulevard came forward and was sworn in. He objected to exceeding the lot coverage, when they built their home they had to get rid of steps going down to their driveway to get under building coverage. In looking at the parapet it looks quite large for an hvac unit and a generator and he wondered if this is not more of an entertainment space and, if it is, what kind of noise is that going to generate; if this is for entertainment is a two-foot wall safe? He is against what appears to be a rooftop deck, even though it was said it will be utilitarian. He felt the standard setback should be what matches towards the east. He said when you are on the sidewalk looking south it appears the houses are set back and the aesthetic is better than having an imposing façade close to the sidewalk. There also is an empty lot that can also go with the average on the block which will create a bifurcated system where some will have a shorter setback and some will have more of a setback. Finally, the houses to the east are older and may be replaced and then the average setback can be used again. Mrs. Laszlo asked if Mr. Kennedy can put a condition in the Resolution that the applicant cannot use the parapet for entertainment purposes. Mr. Middleton spoke up and said there are no plans to use this space this way and they do not want to do this at all, there will be mechanicals up there and the last thing they want to do is sit next to an air conditioning unit.

Mr. Fred Marziano of 116 New York Boulevard came forward and was sworn in. He felt the current building setbacks should be adhered to, his home is set back over 40 feet and built about 5 years ago and they adhered to the 40 foot setback. He felt if the home is pushed forward there is a problem with pervious coverage and he felt this goes against the Borough Master Plan and the saving of trees. He mentioned the neighbors asking to keep the alignment here but if there is that kind of concern then he felt the parapet should be looked as well, as it is above the height requirement. He thanked Mr. Ward for mentioning the tree issue and was glad the Ordinance Committee was looking at that, he would like to see the trees in the front of this property saved. Meg LaChance of 109 Baltimore Boulevard then came forward and was sworn in. She agreed with what was said about the 40 foot setback, she rebuilt her house and followed all

the requirements. She was concerned about the units on the roof, generators are loud and she wasn't sure what it would sound like at 37 feet.

As there were no more public comments, Mr. Middleton summarized this application and reminded all that they are asking for only two variances, everything else complies with the Ordinances, he would like some time to confer with the clients and professionals to take into consideration the trees and generator/parapet wall concerns and he asked to come back. Mrs. Laszlo recommended doing a straw vote before doing this, this has repeatedly happened where someone comes back with revisions and it still is denied, she wanted to caution them. Chairman Hall also suggested hearing from the Board members and then make a decision on how to proceed.

He then asked Mr. Avakian about what the Ordinance allows, an Average Setback. If a structure is taken down, how is the average setback calculated and, also, if a lot is empty how does that apply? Mr. Avakian said the empty lot is not counted, and he was looking for his setback plan but he would find out. Mr. Middleton said the average setback of 36.7 did not include the current house at 27 feet and he took umbrage to this as, when he read the Ordinance, it said all the homes on the block, if you include this home the average setback would probably be more like 34 feet. He understood the neighbors' concern but the Zoning Board has the right to grant variances under the C-1 or C-2 criteria. They already addressed the hardship under C-1 and under C-2 it can be asked if they are promoting something by granting it? In this case are the purposes of Zoning being promoted by having the four houses kept aligned, or will this be promoted by having a checkerboard effect? He said there was a comment on older homes in this area and 102 & 108 New York Boulevard are fairly new houses, so it is not as if they are asking for the world with this request, they are asking to keep the homes in line and, aesthetically, they are keeping the Zoning by keeping this, as well as this is what the neighbors asked so they are not looking at the neighbor's shower in the back. He felt that legitimate arguments have been made.

At this time the Board gave their comments. Mr. Casey did not find the mechanicals on the roof in keeping with the neighborhood, he did not see the water table as a hardship as this is common in Sea Girt and owners do work with this, maybe if the home is pushed back a bit there won't be as much grading work to be done, he was concerned with the drainage due to the wall. Mr. Ward echoed what Mr. Casey had said and this is triggered by wanting a full basement on a property that has a 6-foot water table; if they didn't have that probably a lot of concerns would go away, he has witnessed problems with over 1 foot of grading and, at times, it doesn't turn out well, he also had concerns with the front setback issue. Mr. Walker did not have a problem with the setback, they have every right in the world to put the mechanicals on the roof as that does comply, he felt the grading has been treated reasonably, and it was reasonable to want to have a basement. Mayor Fetzer did not think it a big deal for the small overage in coverage but he felt they can get there as this will be a new home. He was concerned with the driveway width with the wall and it seemed to him like it was

tight and he felt the setback was the big deal. He could not see crunching in homes and putting in a pretty large pool in the back. As far as the mechanicals on the roof he was not sure of the noise, but he agreed it was allowed. He felt they can address some of these things.

Mr. Koreyva asked Mr. Avakian if it is the lesser of the average of the homes or the 40 foot setback? Mr. Avakian confirmed that it is 33 feet as an average on this block so the setback can be at 33 feet, the Average Setback supersedes the 40-foot setback requirement. Mr. Koreyva noted the parapet wall, with just mechanicals, is totally in compliance with the Ordinance, he was fine with the setback as it's only a few feet difference; he also was okay with the overage in building coverage as this is due to steps and with the application as presented. Councilwoman Anthony had an issue with the setback on a brand new construction, she did say she was fine with the average as per the Ordinance and felt it was something for the client to consider. She was concerned with the 37-foot height of the home with the mechanicals and the noise factor as well as the appearance of the home due to this. She also agreed with the Mayor with respect to the narrowness of the driveway and retention walls around the property and the grading as well. She noted the home itself if a lovely home but she felt that something more appropriate can be made.

Mrs. Laszlo said she listened to the excellent presentation and agreed that the topography of this lot presents a unique hardship. It is very compelling to have your neighbors come and testify in your favor on a setback issue, she agreed with Mr. Kociuba that it promotes light, space and general welfare, improving the drainage and creating a positive streetscape. She also noted that our Ordinance allows a generator and hvac mechanical equipment to be on the roof and she suggested Council take a look at this code if it is an issue and she would be in favor of the application. Mrs. Brisben complimented Mr. Graham for designing an absolutely beautiful home, it is unusual looking and very attractive; she had an original problem with the parapet wall but, after seeing the rendering and finding out it is compliant, she was impressed, she had seen other homes in town that do have widow's walks on them and they are not obtrusive at all, she had no problem with the application, she saw the reasoning for the steps and as long as Mr. Avakian is happy with the drainage, she had no problem with it and would be for approval. Chairman Hall was concerned about raising the grade of the property and the setback is the setback. He did not see the hardship for the setback, he was against this due to the grading of two feet and he felt less grading can be done here.

Mr. Middleton appreciated all the comments and will convene with his clients and professionals and asked to come back. Mrs. Laszlo was against this for the reasons stated earlier but Mr. Middleton wanted to carry this. Mrs. Brisben noted that Mr. Avakian will not be able to be present at the November 16<sup>th</sup> meeting as he will be at the League of Municipalities Convention, so Mr. Middleton asked this be carried to the December 21<sup>st</sup> meeting of the Board and

Wednesday, October 19, 2022

waived the time frame for approval; Mr. Kennedy told the audience there will be no further notice as this is being carried and announced this evening.

As there was no other business to come before the Board, a motion to adjourn was made by Mayor Fetzer, seconded by Mr. Koreyva and unanimously approved, all aye. The meeting was adjourned at 11:15 p.m.

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Karen S. Brisben, Board Secretary

Approved: December 21, 2022

Wednesday, October 19, 2022