

Wednesday, November 16, 2011

THE BOROUGH OF SEA GIRT
COUNTY OF MONMOUTH
STATE OF NEW JERSEY
MINUTES OF THE MEETING OF
THE SEA GIRT PLANNING BOARD
WEDNESDAY, NOVEMBER 16, 2011

A Regular meeting of the Sea Girt Planning Board was held in the Sea Girt Elementary School on Wednesday, November 16, 2011 at 7:30 pm. Notice of the time, date and place of the meeting was transmitted to all members and proper notice had been published in accordance with the provisions of the "Open Public Meetings Law".

After the Salute to the Flag, roll call was taken and the following members were present:

Councilman Fred Buonocore	Norman Hall
Larry Benson	Donald Laws
Karen Brisben	Kathryn Matthews
Paul Cerami	Chris Randazzo
Robert Ferguson (Alternate)	

Absent: Councilman Michael Mulroy, Susan Boriotti

Also present was Board Attorney Ben Montenegro; Board member Karen Brisben recorded the Minutes and noted there were 22 people in the audience.

OLD BUSINESS:

The Board turned to the approval of a Resolution for Block 96, Lot 6 & 7, 620 & 624 Chicago Boulevard, owned by Mastrorilli/Darnowski. Mr. Montenegro read the following Resolution into the record:

"WHEREAS, Matthew & Melissa Mastrorilli, whose mailing address is 625 Brooklyn Boulevard, Sea Girt, N.J. 08750, have applied for a minor subdivision approval affecting premises located at Lots 6 and 7, Block 96, as designated on the Tax Map of the Borough of Sea Girt and commonly known as 620-624 Chicago Boulevard Sea Girt N.J.,

WHEREAS, a public hearing was held on the said application on October 19, 2011, in the Sea Girt Elementary School in said Municipality and Testimony and Exhibits were presented on behalf of the applicant and all interested parties having been heard; and

WHEREAS, the said Board, having considered said application, testimony, exhibits submitted, and from its inspection of the site, it makes the following determinations:

1. The tract in question has an area of 28,449.25 square feet (est. 1.65 acres).
2. The tract in question is in the District 1, West Single Family Zone.
3. The applicants are requesting minor subdivision approval to create from the existing two lots (existing lots 6 and 7), 3 fully conforming residential lots (proposed lots 6.01, 6.02 and 7.01). The existing two-story dwelling is to remain on proposed lot 7.01. The home currently existing on Lot 6 shall be relocated to proposed lot 6.01 together with its existing detached garage. Proposed Lot 6.02 shall be a vacant conforming residential lot. No variance relief is required for the relief requested.
4. Applicants submitted the following in support of the application:
 - a. Certified Land development application with signed authorization of co-owner Ronald and Amanda Darnowski.
 - b. Minor subdivision map of tax map Lots 6 and 7, Block 96, prepared by Joseph L. Lazok, P.L.S. of Acre Survey Company, Inc. dated July 19, 2011 (last revised October 12, 2011).
 - c. Plot Plan, Block 96, Lot 6.01, prepared by Ray Carpenter, P.E. of R.C. Associates Consulting, Inc. dated August 31, 2011 (last revision October 12, 2011).
 - d. House plan by Signature Building Systems of Pa., LLC, dated July 14, 2011 (5 sheets).
 - e. October 17, 2011 correspondence of applicants' counsel Gregory W. Vella, Esq. outlining the final revisions to the plan in response to the Board Engineer's Report.
 - f. October 6, 2011 Engineer's Report prepared by Peter R. Avakian, P.E., Planning Board Engineer.
5. The Board's Subdivision Committee reviewed the subject application in accord with Ordinance provisions, and in conjunction with the Board Engineer, the Committee has recommended approval of the subject application as a variance free minor subdivision.
6. No persons appeared in opposition of the application.
7. The Board makes the following findings, to wit:
 - a. The property is located at the southeast corner of Chicago Boulevard and N.J. State Highway Route 71 and currently consists of two lots.
 - b. The existing Lot number 7 contains house number 620 (Darnowski property) and existing Lot number 6 contains house number 624 (Mastrorilli property).
 - c. The applicant is proposed a minor subdivision to consolidate the existing parcels and creating three new building lots.

Existing house number 620 is proposed to remain on proposed Lot 7.01. Existing house number 624 is proposed to be relocated together with its detached garage to proposed Lot 6.01. Proposed Lot 6.02 would be rendered a vacant fully conforming residential building lot upon which applicant intends to construct a home substantially similar to the architectural plans submitted.

- d. The property is located in the District 1 West Zone Single Family Zone and single family dwellings are a permitted use in the district.
- e. The proposed minor subdivision plan identifies that the property and development plan meets or exceeds all bulk regulations of this District 1 West Zone.
- f. No variance relief from the Zoning Ordinance is required for the proposed minor subdivision.

NOW, THEREFORE, BE IT RESOLVED by the said Board that on this 19th day of October 2011 based on the findings hereinafter stated, it does hereby approve the application subject to the following conditions:

1. Applicants should obtain any other approvals with respect to the submission from any other Federal, County, State or Municipal Agency having jurisdiction over same.
2. Applicants should re-submit this entire proposal should there be any deviation from this Resolution or the submitted documents, which are hereby made a part hereof and shall be binding on the applicants.
3. Applicants shall construct at applicants' sole cost and expense all improvements reflected on the submitted documents or required by this Resolution.
4. The relief granted hereunder shall be rendered null and void should the applicant fail to remove/relocate the existing residence and detached garage (house number 624) within one year from the date of adoption of this Resolution.
5. The applicants shall comply with all of the requirements set forth in the Board Engineer's report dated October 6, 2011 unless specifically exempted by the Board and/or Board Engineer at the time of the hearing on the application.
6. The applicant shall provide the following detail/notes on the plot plan drawings:
 - a. Replacement of existing curb and sidewalk will be required if found to be in poor condition.
 - b. Location of new utilities proposed for each building lot.
 - c. The proposed driveway apron width shall not exceed 13 feet.
7. All roof leaders on the home to be constructed on Lot 6.02 as well as on the relocated home to Lot 6.01 shall drain to a stone recharge pad

or trench approved by the Board Engineer's Office in order to promote ground water recharge or another design that is approved by the Planning Board Engineer."

A motion to approve the above Resolution was made by Mr. Laws, seconded by Councilman Buonocore and approved by the following roll call vote:

Ayes: Councilman Fred Buonocore, Larry Benson, Karen Brisben, Paul Cerami, Robert Ferguson, Norman Hall, Donald Laws, Kathryn Matthews, Chris Randazzo

Noes: None

The Board then turned to approval of a Resolution for Block 9, Lot 5, 649 Ocean Avenue, owned by Keith & Lynn Horn. Mr. Montenegro read the following Resolution into the record:

"WHEREAS, Keith & Lynn Horn, whose mailing address is 57 Maria Road, Woodcliff Lake, N.J. 07677, have applied for variance relief to allow for the demolition of the existing single family dwelling on site and the construction of a new two and half story single family dwelling affecting premises located at Lot 5, Block 9, as designated on the Tax Map of the Borough of Sea Girt; and commonly known as 649 Ocean Avenue, Sea Girt, N.J.

WHEREAS, a public hearing was held on the said application on October 19, 2011 in the Sea Girt Elementary School in said Municipality and Testimony and Exhibits were presented on behalf of the applicant and all interested parties having been heard; and

WHEREAS, the said Board, having considered said application, testimony, exhibits submitted, and from its inspection of the site, it makes the following determinations:

1. The tract in question has an area of 12,290 square feet.
2. The tract in question is in the District 1, East Single Family Zone.
3. The applicants are requesting variance relief to allow for the demolition of the existing single family home and construction of a new two and a half story oceanfront home; with existing detached garage to remain. Variance relief is required as follows:
 - a. Maximum building height where 35 feet is permitted and 38.4 feet is proposed.
 - b. Side setback for basement stairwell where 5 feet is required and 1 foot is provided.
 - c. Paver patio/deck within the front yard where same is prohibited;
 - d. Outdoor shower and Jacuzzi proposed in front yard where same is prohibited;

- e. Maximum area for free standing garage where 500 square feet is allowed and 616 square feet is existing and proposed to remain;
 - f. Maximum allowable accessory structure height where 16 feet is allowed and existing free standing garage in excess of 16 feet is proposed to remain.
4. Applicants submitted the following in support of the application:
 - a. A Plot Plan consisting of one (1) sheet prepared by Ray Carpenter, P.E. of R.C. Associates Consulting, Inc. dated June 29, 2011, with the latest revision dated September 7, 2011.
 - b. An Architectural Plan consisting of three (3) sheets prepared by Christopher Rice, AIA, dated June 28, 2011, with one revision dated August 12, 2011.
 - c. A Topographic survey consisting of one (1) sheet prepared by Paul K. Lynch, P.L.S. dated September 2, 2010, with one revision dated July 2, 2011.
 - d. Exhibit A1- photo rendering prepared by Architect Christopher Rice.
 - e. Exhibit A2 – 2005 Parisella Resolution of the Sea Girt Planning Board.
 - f. Exhibit A3 – 2005 Donnelly Resolution of the Sea Girt Planning Board.
5. Keith Horn testified on behalf of the applicants as follows, to wit:
 - A. He and his wife are the owners of the subject property, having purchased same in September 2010.
 - B. It is an oceanfront home with street access via Crescent Park and with frontage along the unimproved paper street of Ocean Avenue on the eastern side of the property.
6. Christopher Rice, Professional Architect, testified on behalf of the applicants as follows, to wit:
 - A. He prepared the architectural plans for the subject property submitted in support of the application. He prepared and entered Exhibit A-1, a photo rendering of the proposed home and site improvements for a better depiction of the proposed home to be constructed on the site.
 - B. As to the height variance being requested, he noted that there is a significant slope from Crescent to the Ocean Avenue unimproved street. He noted that if measured from the Ocean Avenue paper street the proposed home measures only 32 feet in height; however, the Ordinance requires the height to be measured from Crescent which renders the proposed building height 38.4 feet whereas 35 feet is allowed in the zone.
 - C. He further noted that the development for the subject neighborhood is unusual in nature inasmuch as the Ordinance defines the front yard of the property as the eastern portion of

- D. He testified that functionally, however, the usage of the site is the inverse: with the oceanfront (eastern) portion of the lot, otherwise utilized as the rear yard of the site and The Crescent (western) yard utilized as the front yard of the residential site. This creates the additional need for variance relief to provide for a ground level deck, outdoor shower and Jacuzzi in the defined front yard of the site.
 - E. In reviewing the photo rendering as well as the architectural plans submitted, he opined that the proposed development at the site would be an aesthetic improvement to the subject property and the surrounding neighborhood and would be consistent with the existing development in the area as it relates to the size, type and quality of the construction proposed.
 - F. As to the side yard nonconformity identified in the Board Engineer's Report, he noted that the side yard setbacks to the proposed home are in full compliance with the Zoning Ordinance. He identified noncompliance relates solely to the below grade stairwell to the basement. He opined that this, therefore, creates no detrimental impact on the site.
 - G. He rendered an opinion that the proposed construction would be a benefit to the area and would create no substantial detriment to the surrounding property owners nor to the Zone Plan of the Borough of Sea Girt.
7. Ray Carpenter, P.E., P.P., testified on behalf of the applicants as follows, to wit:
- A. He testified that the significant slope to the unimproved Ocean Avenue constituted an exceptional condition/physical feature of the property uniquely affecting the subject property and thus the strict application of the height regulation would result in an undue hardship upon the property owner. He noted that the proposed home as measured from the crown of the unimproved portion of Ocean Avenue would define the buildings height as 32 feet well below the 35 feet allowed in the zone. He opined that the proposed single family home at its proposed height would create no negative impact to the surrounding properties or to the Zone Plan and indicated that same was consistent with the size and height of other homes in the area. He further opined that the proposed home with architectural characteristics is an aesthetic improvement to the site.
 - B. As to the bulk variances for the location of the ground level patio, outdoor shower and Jacuzzi within the front yard, he testified that the Ordinance definition of the front yard as the

eastern portion of the lot fronting on the unimproved paper street of Ocean Avenue creates a unique condition inasmuch as the eastern side of the property is functionally utilized by the owners for recreational purposes as what would otherwise be the rear yard. He opined that the proposed application with variances is a better zoning alternative than locating the patio, outdoor shower and Jacuzzi in the true front yard (western yard) where street access is provided to this site via Crescent.

- C. As to the proposed continuation of the nonconforming detached garage (size and height), he noted that the structure is existing and functional and does not create any negative impact to the surrounding properties nor the development of the site. He noted that the garage does not provide for any living space nor is same proposed as part of this application.
 - D. He confirmed that the proposed ground level deck on the eastern side of the home would not extend eastward of the support columns as depicted on the architectural. Said ground level deck shall not exceed 14'x35', as depicted on the Rice architectural plans.
 - E. He confirmed that the proposed Jacuzzi is to be located on the northern side of the grade level deck, and shall not be placed outside of the footprint of the grade level deck.

In support of applicant's request for variance relief, he assured the Board that, due to the slope of the property, the proposed Jacuzzi would not be visible from existing boardwalk east of the subject home.
 - F. He testified that the applicant's intent is to provide for a Jacuzzi with a locked cover so as to preclude the need for any fencing around the Jacuzzi; if fencing is required, applicant proposes a 4 foot fence around the Jacuzzi with said fencing not to extend northern or eastward of the grade level deck.
 - G. He testified that the proposed home to be constructed is located in Flood Zone X and as such the construction is not restricted to having the lowest floor, including basement, elevated to or above base flood elevation.
 - H. As to the proposed outdoor shower, he testified that same shall be located under the south eastern staircase on the grade level patio/deck with the construction of said outdoor shower to fully comply with all Ordinance and building code requirements.
8. No persons appeared in opposition to the application.
 9. The Board makes the following findings, to wit:
 - A. The application as presented meets the positive and negative criteria for the variance relief requested based on the following:
 - The need for the height variance relief requested is precipitated by the unusual slope from the western lot line

(Crescent) to the eastern lot line (unimproved Ocean Avenue). The strict application of the relevant Zoning Ordinance regulations will result in undue hardship upon the applicant and excessively restrict the height of the proposed single family oceanfront development on the site.

- The height and dimension of the proposed home with architectural characteristics is an aesthetic improvement to the site and surrounding area and is not out of character with the development and size of homes along the oceanfront.
- Variances required for the location of the ground level deck, outdoor shower and Jacuzzi within the front yard (eastern yard/oceanfront) is a better zoning alternative at the site for the proposed improvements as opposed to location of same on the western yard of the site which provides street access from Crescent Park.
- The proposed single family home meets the side yard setbacks for the zone with the only intrusion into the side setback being the below grade outdoor staircase to the basement with said nonconformance a diminimus violation of the setback requirements.
- The existing free standing garage structure which is nonconforming as to area and height is an existing condition proposed to remain at this site. Inasmuch as said structure is existing, functional, and its non-conformance not excessive in nature; when taken in conjunction with the size of the lot and the proposed development, same shall be allowed to remain. Applicants stipulated a condition that same is for vehicles/storage only and there is not currently nor shall there be constructed any livable space within said structures.
- The proposed development plan is a significant aesthetic improvement to the site and surrounding neighborhood and thus promotes the general welfare of the community. This benefit outweighs any detriment from the variances proposed.
- The proposed variance relief requested will create no substantial detriment to the surrounding properties nor to the Zone Plan of the Borough of Sea Girt.

NOW, THEREFORE, BE IT RESOLVED by the said Board that on this 19th day of October, 2011 based on the findings hereinabove stated, it does hereby approve the application subject to the following conditions:

1. Applicants should obtain any other approvals with respect to the submission from any other Federal, County, State or Municipal Agency having jurisdiction over same.
2. Applicants should re-submit this entire proposal should there is any deviation from this Resolution or the submitted documents, which are hereby made a part hereof and shall be binding on the applicants.
3. Applicants shall construct, at applicants' sole cost and expense, all improvements reflected on the submitted documents or required by this Resolution.
4. The relief granted hereunder shall be rendered null and void should the applicants fail to commence construction within 1 (one) year of the date of this Resolution.
5. The applicants shall comply with all representations and agreements made by the applicants or applicants' representative during the consideration of this application.
6. The applicants shall comply with all of the requirements set forth in the Board Engineer's Report, dated October 6, 2011, unless specifically exempted by the Board and/or Board Engineer at the time of hearing on the application.
7. Applicant shall modify/add to the plans submitted for Resolution compliance/permits the specific location of the proposed Jacuzzi and any required Jacuzzi-surround fencing, neither of which may extend beyond the footprint of the approved grade level deck.
8. The existing garage shall remain, however, applicants shall not expand the structure nor convert/utilize said structure for livable space."

A motion to approve the above Resolution was made by Mr. Ferguson, seconded by Mr. Randazzo and approved by the following roll call vote:

Ayes: Councilman Fred Buonocore, Larry Benson, Karen Brisben, Robert Ferguson, Norman Hall, Donald Laws, Chris Randazzo

Noes: None

Not Eligible to Vote: Paul Cerami, Kathryn Matthews

At this time the Board considered the approval of Minutes from the October 19, 2011 meeting. Mrs. Brisben noted that Mr. Laws had found two small typographical errors and they will be corrected. The Minutes were then approved on a motion by Mr. Randazzo, seconded by Mr. Laws and unanimously approved, all aye.

NEW BUSINESS:

It was announced that the variance hearing for Block 8, Lot 5, 814 First Avenue, owned by Beatrice Riccardo, is being postponed, by the applicant, to the December meeting of the Board. Mr. Montenegro asked Mrs. Brisben if proper notices were given and she did not know so it was announced that this hearing is being carried pending proper notification.

The Board then turned to an appeal application for Patricia Henry, this is an appeal from the Zoning Officer's and Board Engineer's determination regarding construction to be allowed at Block 25, Lot 6, 900 Second Avenue, owned by David & Susan Nolan. Before this hearing started, Mrs. Matthews stepped off the dais due to being within 200 feet of the property in question.

Mr. Montenegro explained that this is an appeal of the Zoning Officer's determination for development at 900 Second Avenue, this appeal is being filed by the neighbor and this is allowed. At the conclusion of all testimony the Board will be asked if they are in agreement with the Zoning Officer's decision or if he was, indeed, in error. There is counsel here for both sides, the property owner and the neighbor. Chairman Hall commented this is the first time in several years that an appeal has been filed and he wanted to make sure the proper procedure was followed.

At this time the two attorneys came forward, Edward Liston for Patricia Henry and John Giunco for the Nolans. Mr. Liston was first to speak and said they are asking for a reversal of the decision by the Zoning Officer which they feel was misinterpreted. The address for this property is 900 Second Avenue and the front yard has been determined to be Washington Boulevard, which would mean the rear yard would be right next to Mrs. Henry's property, this from a letter from Zoning Officer Jim Quigley dated September 2011. He said the problem is that it is inconsistent with lot development in Sea Girt in general; he quoted Section 17-5.1(e) where it states that, in case of a corner lot, no detached building may be erected adjacent to a street.

He had three exhibits to present, two were aerial photos and one was a rendering of the proposed home which shows the proximity of the proposed garage which will be right by his client's front porch. Mr. Montenegro asked if these were his opening remarks or is he moving forward with testimony. He felt the attorney for the Nolans should be allowed to have opening remarks.

Mr. John Giunco, Esq. came forward and asked if the Zoning Officer was present and the answer was no. He said that the Nolans, as well as the Architect, Christopher Rice, met with the Zoning Officer and there were no variances needed for this building. The definition says that the rear yard is opposite to the front yard and they will show this.

Mr. Liston then proceeded and noted he actually had four exhibits, not three. The first is a rendering of the Nolans' plan showing the present and proposed locations of the garage & cabana in relation to his client's home, this was marked as Exhibit A-1 by Mr. Montenegro. Exhibit A-2 is a Google map of Block 25, Exhibit A-3 is a Google aerial for Block 24 which is a mirror image of Block 25 and the final Exhibit, #A-4, is a Google map of Sea Girt showing Blocks 24 and 25. Mr. Giunco had no questions for Exhibits A-2 through A-4 but wanted to know the scale and setbacks for Exhibit A-1. Mr. Liston asked that the person who made this Exhibit, Paul C. Henry, be sworn in, he is the son and will testify; he came forward and this was done.

He said Exhibit A-1 was blown up from the original site plan to show the location of the garage and cabana by his mother's house. Mr. Liston showed the setbacks and said they are consistent with the neighborhood. Mr. Giunco asked Mr. Henry if he was a surveyor, architect or engineer and the answer was no. Mr. Giunco then asked what scale did he use in making this drawing and Mr. Henry said approximately 3/16 scale. Mr. Giunco asked what is the width of the subject lot and Mr. Liston objected as this is not shown on this or on the actual plan of the Nolan home. Mr. Giunco asked if this was copied from Mr. Rice's plan and Mr. Henry said the actual site plans show the garage at a 15 foot setback. Mr. Giunco again asked where did he copy this exhibit from and Mr. Henry said his sister prepared the plan. At this point he objected to this Exhibit and then asked where is the Henrys' driveway - Mr. Henry showed him; Mr. Giunco again objected to this Exhibit as he did not feel it was accurate. Mr. Liston said they just want to show the proximity of the garage and cabana to his client's home.

Mr. Giunco said the purpose of being here tonight is to determine the Zoning Officer's decision and the Board is being questioned if he was correct and the plan is conforming, that is the issue. Mr. Montenegro said the Board will allow the exhibit; credibility may be provided and the Board will weigh this, he felt the neighbor should be able to present the appeal.

Mr. Liston then called Patricia Henry forward and she was sworn in, she is the owner of 904 Second Avenue. She moved to Sea Girt in 1971 and her husband died in 2009, 50% of the home is hers and 50% is in a family trust for the children, before moving to this home she lived at 712 Boston Boulevard for 25 years. In 1985 they purchased 904 Second Avenue for her husband's parents and in 1997 she and her husband moved into the home. She said they use the front porch, it is screened and the house was built around 1934, she wants to stay in Sea Girt and not move to a smaller home. As her children come to visit and they all enjoy the screened-in front porch, she felt she had to file the objection due to the location of the garage right by this porch.

Mr. Giunco once again reminded all that this is an issue of the Zoning Officer's determinations but Mr. Montenegro said he will allow the information to be presented.

Mrs. Henry said the plans set the garage at 16 feet high and it will smother her front porch as well as impact her view, she can't have a 6 foot fence here so why have a 16 foot high garage which will also be close to the existing fence.

At this time Mr. Thomas A. Thomas, a Professional Planner, came forward and was sworn in. He has a BS degree from Penn State and a Masters Degree from Rutgers, as well as a PhD. He is the former County Planner for Ocean County and has been before over 100 Boards in New Jersey, he has done a lot of work in Wall Township and worked on the Master Plan for Spring Lake Heights, he is a Licensed Planner. The Board accepted him as an expert witness.

Mr. Thomas was familiar with this area as he has passed this property over the last 20 years going to the beach and had reviewed all reports. He did not think the Zoning Officer's approval is consistent with the Zoning Ordinance and referenced Section 17-1.2 where it speaks of 2 or more streets abutting a lot, there are only 2 or 3 lots like this in Sea Girt and the property in question is one of them. This is a unique situation here and when you look at it you have to determine which of the 2 streets would be the front yard, he did not feel it would be the street that is 25 or 30 feet wide (Washington Boulevard) so it would have to be either Second Avenue or The Crescent.

Exhibit A-3 shows the mirror image of this property located on the other side of Crescent Park and that property has a front yard on Second Avenue and that garage parallels the house which is consistent with development in this area. Exhibit A-2 shows the Nolan property. Mr. Liston asked Mr. Thomas if all Second Avenue properties set back 40 feet and Mr. Thomas said the Henry property is 42 feet back and the Nolan house is as well, they are consistent with the other homes. Mr. Liston referenced Section 17-5.1(e) which deals with an accessory building on a corner lot and Mr. Thomas read the following "...no detached accessory building, including a freestanding garage, shall be erected in any yard adjacent to either street..." (note: page 1718 Sea Girt Zoning Ordinance). He said the reality is that the building does not face that way and he did not think the Zoning Officer's determination is consistent with the Ordinance and there is sufficient space on the lot to comply with the Ordinance.

Mr. Montenegro asked him if this is, indeed, a corner as it is such an irregular shape and Mr. Thomas said it is a corner and has three streets abutting it which is unique - if there were two streets this would make more sense but the Zoning Officer's report does not work with three streets.

Mr. Cerami noted that the Board granted variances to the home on the mirror image lot on the other side of Crescent Park and Mr. Thomas agreed. Mr. Cerami felt there are more than 3 lots in town with this situation and felt the homes of these lots all have attached garages. Mr. Thomas said that would make sense to have them and reminded all that the town of Sea Girt was laid out 65-70 years before a Zoning Ordinance.

Mr. Liston asked about the front door to the Nolan home and that it is facing The Crescent; Mr. Thomas said yes and commented there is no ingress or egress from Washington Boulevard, there is just a bilco door there and he did not consider this a front yard. Chairman Hall asked where would he put the garage and Mr. Thomas said it can be set back 40 feet from Second Avenue and would be more in the center of the lot. Chairman Hall asked if this moving of the garage would necessitate a need for a variance and the answer was yes. Mr. Montenegro asked if the determination that Washington Boulevard is the front yard and the common line is the rear yard, is the application variance free as the Zoning Officer states. Mr. Thomas did not agree that it is, he felt the front yard is violated with this garage, it needs to be set back more than 15 feet. Mr. Montenegro argued that if Washington Boulevard is the front yard, would Second Avenue be the side yard? Mr. Thomas said yes but there still is the provision of a free-standing garage regulation.

Mr. Benson asked if the address is 900 Second Avenue, why is Washington Boulevard the front yard? Mr. Thomas said that is what they are addressing tonight.

Mr. Giunco asked Mr. Thomas what the Zoning Officer did wrong here and Mr. Thomas said he only looked at the bulk standards, the garage is inconsistent with the Ordinance. Mr. Giunco then asked if the laws of Sea Girt apply to this and referred to the Ordinance where it states that "in case of a corner lot the smaller lot is considered the front lot line". Mr. Thomas agreed that is what the Ordinance says but there are three streets here to be considered. Mr. Giunco then went to Exhibit A-1 and asked which is the shortest lot line and Mr. Thomas said Washington Boulevard, but he argued if you put the garage where it is it becomes inconsistent with the other part of the Ordinance. Mr. Giunco said the Zoning Officer is bound to apply the definition of front yards as per the Ordinance and Mr. Thomas countered that he should also apply Section 17-5.1(3) which speaks of a garage not being adjacent to a street. Mr. Giunco then felt there could not be any garage here and Mr. Thomas said it can be set back the same as the principal structure.

Mr. Thomas then stated that, in reality, the front yard of this lot should be The Crescent or Second Avenue; Mr. Giunco asked him which is the shortest lot, Second or Crescent and Mr. Thomas felt it should be Crescent and admitted

again this is an unusual lot. Mr. Giunco then asked if there should be an Ordinance amendment and, if so, did he go to the Governing Body to ask for an amendment? Mr. Thomas answered no.

Mr. Giunco asked Mr. Thomas if he was familiar with the Board's actions in the past with these issues and Mr. Thomas said no. This is a matter of setting where the front yard is and by making Washington Boulevard the front yard created an access by his client's home and that is the problem. He again said this is unique here and there is no definition for a lot that fronts on three streets. Mr. Giunco said if the Nolans put the garage back the 40 feet requested by Mrs. Henry and then they want to put in a pool in their rear yard, their rear yard would become The Crescent and Mr. Thomas said yes. Mr. Liston objected to this as a pool is not on the plans submitted. Mr. Montenegro said he would allow it as to consistency, this can apply to a pool or a garage. Mr. Thomas said they would both have to be set back 40 feet from Second Avenue or The Crescent.

Mr. Giunco asked if this would be consistent with Exhibit A-3 and A-4 as he saw pools along The Crescent. Mr. Thomas said Exhibit A-2 is correct and agreed there are pools on The Crescent. Mr. Giunco noted there is also one on a similar lot on Trenton Boulevard and yet Mr. Thomas is stating the Nolan plans are not consistent with other homes but this shows there are other homes that are configured this way. Mr. Thomas felt those homes have garages back 40 feet, they back up to The Crescent.

The two then went over the definition of a rear yard and Mr. Giunco commented that if Washington Boulevard is the front yard then the rear yard is the area between the Henry home and Nolan home. Mr. Thomas said that if it is determined that Washington Boulevard is the front yard, then the answer would be yes but then you have to apply the regulations regarding the detached garage and once again spoke of consistency with the area. Mr. Giunco then asked what is wrong with the Zoning Officer's report and Mr. Liston spoke up and said the Zoning Officer is not here to testify.

Mr. Thomas said this property almost comes to a point and this is an unusual situation; to say the shortest distance is the front yard does not work here, there is no driveway access or ingress/egress here so this does not make sense. Mr. Montenegro quoted the Ordinance where it states "two or more streets". Mr. Thomas again referred to the provision for the free standing garage and Mr. Montenegro noted the Ordinance does not give setback lines in speaking of the free standing garage, so where does it go? Mr. Thomas answered in between both Second Avenue and The Crescent to be consistent; he felt this was the intent here.

Mr. Montenegro questioned the point of setback and “adjacent to street”, would it be 20, 30 or 40 feet – he felt anywhere it would be “adjacent to a street”. Chairman Hall asked since the Ordinance does not state distances, can this be interpreted that there can’t be a garage? Mr. Thomas said perhaps not a detached garage. Mr. Cerami then asked if this can be done only if a garage is attached and Mr. Thomas said yes, this would make it more compatible with the area. He felt that perhaps the Board can address this with the Governing Body for a better definition.

Mr. Cerami went back to his earlier statement that all other homes in this situation have attached garages and maybe that is why. Mr. Benson felt that, with all this discussion, can we not decide this with the address of 900 Second Avenue? Mr. Montenegro said no, the address is not relevant. Mr. Benson then said that the Zoning Officer determined Washington Boulevard to be the front yard and Mrs. Brisben commented that also is the opinion of the Board Engineer, his report also says the front yard line is Washington Boulevard, he agrees with the Zoning Officer.

At this time Mr. Paul Henry came back up to speak and presented three more exhibits, three photos. Exhibit A-5 is a view of Washington Boulevard at the point of this property, it was taken across the street; Exhibit A-6 is a view of the Nolan house taken from his family’s kitchen window; and Exhibit A-7 is another view of the home from Second Avenue which shows the corner and enclosed porch. Mr. Giunco asked in Exhibit A-5 how they know it is a 40 foot setback and Mr. Henry said he checked the plans done by Mr. Rice.

This finished the testimony of Mr. Thomas and Mr. Henry and Mr. Christopher Rice, Architect, came forward and was sworn in. As the Board is very familiar with Mr. Rice he was accepted as an Expert Witness. Mr. Montenegro marked his Exhibit as O-1. Mr. Rice said this Exhibit is a rendering of the site plan, he put some colors on it and it’s the same plan that the Board has in front of them that was submitted. Both the Zoning Officer and Engineer said Washington Boulevard was the front yard so he put a red line to show the building envelope based on that; the green line shows if Second Avenue were the front yard and this would require variances. The existing home was built long before the Zoning Ordinance was in effect, the yellow lines show where the existing home is and you can see it violates the setbacks. He said it is his job to make a variance-free application and referred to the red lines where they can provide a home with a front yard and rear yard using Washington Boulevard as the front yard line. He was able to make a variance-free application this way, if he tried to use Second Avenue there would be a need for multiple variances.

Mr. Giunco asked him if he had to rework this to make it fit and Mr. Rice said yes; he was familiar with this unusual lot as he was the architect that worked on the Davey house which is on the lot that mirrors this one on the

other side of Crescent Park but wanted to note that was a renovation, not construction of a new home. He said the shorter line has always been the front yard and in the other mirror lot that was used, however, that property had multiple variances as it was a renovation of an older home. They moved the garage to face Second Avenue as in that lot that was a better place for it. He has done corner lots before and felt this property's design was consistent with the Zoning Officer's and Board Engineer's determination.

Mr. Giunco asked Mr. Rice if a detached garage is consistent with other homes and Mr. Liston objected, but Mr. Rice was allowed to answer. He said the Sea Girt Ordinance encourages detached garages, that was explained to him 15 years ago by the Planning Board at that time and detached garages were in keeping with neighborhood, it is consistent. He said that on this property where it is located is awkward for the neighbor but it is in keeping with the Zoning Officer's determination and is correct as to the Ordinance.

Mr. Liston asked him if he knew of any other homes with 3 sided lots and detached garages and Mr. Rice said not off the top of his head. The Davey residence was a home with a detached garage and they added a breezeway. Mr. Liston asked if, from the point of consistency, would it not be better to make this home have an attached garage and Mr. Rice said architecturally, no, it would not be advantageous as the Ordinance is not set up that way, an attached garage will be adding to the square footage of a home. Mr. Liston asked if the Nolans want to max out their lot coverage here and Mr. Rice said he did not know that and commented there are a lot of rules regarding attached, detached or integrated garages.

Mr. Randazzo noted in the Zoning Ordinance is states a deck cannot be in a front yard, if there can't be a deck how can there be bilco doors? Mr. Rice said if they are higher than 16" they are considered part of the structure, these doors would not be that high. Councilman Buonocore asked if it is possible to have the garage on the west side and Mr. Rice said that, according to the Zoning Ordinance, that would be the front yard. Is it possible? Yes, but by Ordinance, no. Mr. Benson asked if it can be put on The Crescent and Mr. Rice answered that would not work for the Nolan home and may create other issues, they may have to move the driveway - he felt the garage on the plan is in the best location.

Once again, Mr. Montenegro told the Board the nature of this is a decision of where is the front yard, does this plan comply with the Ordinance or not? Designs and layouts are not the issue here.

Mr. Cerami asked Mr. Rice about Section 17:5.1(e) on free standing garages. Mr. Rice said he did not know on what point a garage is not adjacent to a street. Mr. Cerami said that other properties have attached garages and

wanted his opinion on that; Mr. Rice said he did not know the dimensions on this and the Ordinance is vague on dimensions needed. He said this garage was placed as it should be and is in the rear yard. Mr. Cerami asked him how many times, in his career, has he comes across a Zoning Officer error and he didn't know.

Mr. Liston asked him if the garage is closer to Second Avenue and the answer was yes; Mr. Liston then asked him if the garage can be moved closer to The Crescent and the answer was yes. Mr. Liston then asked him if that would be more consistent, for the garage to be mid-point and Mr. Rice said he did not know. Mr. Liston then asked if the proposed garage will have more of an impact on the Henry home and Mr. Rice said it will impact their porch, farther back it will impact their home. Mr. Giunco objected to this questioning but Mr. Liston was allowed to go on.

Mr. Liston asked Mr. Rice if it were moved closer to The Crescent would that have less impact on the Henry home and Mr. Rice said that is what the Henry family is saying. He then asked if it were moved would it be in compliance and the answer was no as it would then violate the setbacks and if he slid the garage down the driveway it would eat up half of the back yard and the Nolans would be left with no rear yard; the Ordinance is set up to allow rear yards. Mr. Giunco then asked if the Ordinance encourages detached garages and rear yards and the answer was yes. Mr. Laws asked if it can be moved a little without violating setbacks and Mr. Rice said the more you move it back the closer it gets to the proposed house, you do not want to have a detached garage less than 15 feet from the home.

Mr. Liston asked if the garage were moved just a little can there still be a 15 foot separation and Mr. Rice said it might be possible but again, setbacks would be violated. Councilman Buonocore asked how many feet was it between the Davey home and their garage and Mr. Rice said maybe 20 feet or so. Mr. Liston asked if the garage can be made to line up with the home on The Crescent and Mr. Rice said yes but it would be in the rear yard and this would make a pool, if one were put in, to be where the proposed garage is, as well as a playground. Mr. Montenegro thought that would require variances and Mr. Rice said it would. Mr. Liston asked why this would require a variance and Mr. Rice stated it would violate the rear yard setbacks.

Mr. Giunco spoke up at this time and felt they had gotten off the reason for this hearing, they are now redesigning the home. The question here tonight is does the Ordinance apply as well as the Zoning Officer's & Board Engineer's determination, not the layout of the home.

As there were no questions from the Board, the hearing was opened to the public for questions to Mr. Rice and Ms. Celeste Miller of 712 Boston

Boulevard came forward. She noted this application is variance free but the Board hears variance applications and can't this be done here? Mr. Rice explained that variances are not just created, when you can't comply with the Ordinance you can ask for a variance and they can be granted if the benefits of the variance outweigh the detriments of going against the Ordinance.

Mr. Montenegro, once again, reminded all that the only matter here this evening is to decide if the Ordinance was followed or not, the Board is not going to redesign the home; the question is whether this plan is in compliance or not.

Mrs. Pat Holt, who is not a Sea Girt resident anymore, came forward. She wanted to know where the back yard on the Davey property is and Mr. Rice said it is the same as here. Their front yard is Boston Boulevard and they needed variances, but stated this is a different situation here. Mr. Liston inquired about the variances on the Davey residence and Mr. Rice said there were two applications, one in 2006 and one last year, multiple variances were requested as they were renovating their older home, not demolishing it and putting up a new one. The variance requested last year was to enlarge their existing front porch which was really not more than a stoop, this was really their back yard and the Board did grant that for aesthetics, they had close to a 40 foot setback off Second Avenue.

Mr. Giunco also referred to the Davey property and the Resolution from 2006 and asked Mr. Rice to read the portion of it regarding the narrow point of the lot. Mr. Rice read that the narrowest part of the lot was on Boston Boulevard and that is considered their front yard. Chairman Hall asked Mr. Rice if every application is based on its own merit and the answer was yes. Mr. Giunco asked if the Ordinance must be applied as written and the answer was yes.

As there were no other questions to Mr. Rice that portion of the hearing was closed and Ms. Christine Nazzaro Cofone came forward, she is a Licensed Professional Planner and has been before this Board before, she has testified over 100 times in front of Planning Boards. The Board accepted her as an expert witness.

She said she reviewed the site and felt there is no other way to apply the Zoning Ordinance, it states the frontage is to be taken from the smallest lot line and leaves no "wobble room". So the frontage here would be Washington Boulevard, this is a corner lot that abuts 2 or more streets. Mr. Giunco asked if the street address matters and Ms. Cofone said no, the definition in the Ordinance is what applies and, if Washington Boulevard is the front yard, then the garage is properly placed in the rear yard; the plan presented is in complete compliance. Mr. Giunco asked her about 17-5.1(e) and the reference to

detached garages and Ms. Cofone said that applies to lot with 2 streets, but this lot has 3 street frontages. Mr. Montenegro noted it says "abutting two streets" and Ms. Cofone agreed that it says "two", not "two or more" so this is not applicable here.

Mr. Giunco asked her if she had reviewed any other residences concerning this and she said she read the Resolution on the Davey property and that stated the shortest lot width was the front yard, this agrees with the determination by the Zoning Officer and Board Engineer. Mr. Giunco asked if there is any doubt as to the language and Ms. Cofone said no, it is clear the Nolans should be able to build as designed. Mr. Liston asked her to clarify that 17-5.1(e) does not apply here and she said that speaks of "two" streets. He said that, in this case, the rear yard is adjacent to two streets and Mr. Cofone said it would be peculiar to set up a code that you cannot have a detached garage and the Ordinance in Sea Girt favors those kinds of garages.

Mr. Cerami asked a question about 17-5.1(e) and Ms. Cofone said she was hired for this case only and not for a home that abuts two street corners. Mr. Cerami then commented that on corner lots that abut three streets, all of them have attached garages. He felt that 17-5.1(e) applies here and Ms. Cofone disagreed. At this time the hearing was opened for questions to Ms. Cofone and, as there were none, the hearing was opened for general comments by the audience.

Mr. Chip Sweeney of 218 Beacon Boulevard came forward and was sworn in, he is a 40 year resident of town, is an appraiser and was a past member of the Board. He felt the voice of reason should be applied here, the Nolans have the law on their side but this is a unique property and if you were sitting on the Henry family front porch you would be looking at a garage. He felt the Nolans were creating a hardship here because of the location of the garage so they can put in a pool and playground. Mr. Montenegro told him that "hardship" applies to variances and that is not the case here. Mr. Sweeney again said common sense has to take over. Mr. Cerami asked Mr. Sweeney, as he was an appraiser, if the placement of the garage would affect the assessment of the home? Mr. Giunco objected to this question and Mr. Montenegro agreed. Mr. Sweeney ended his comments by stating there are 5 properties in Sea Girt that face 3 corners.

Next to be sworn in was Kathryn Matthews, who lives across the street from the property. She felt the proposed home would be a vast improvement and saw no reason to be negative about it. Mr. Liston objected to her coming forward as she is a member of the Planning Board who had to recuse herself as she lives within 200 feet of the property; he felt she should not use her influence on the Board members. Mr. Montenegro said that, in this case, her statement was relevant and Mr. Liston withdrew his objection.

Sharon Kregg of 613 Brooklyn Boulevard came forward and was sworn in. She agreed that the Planning Board should use common sense, to build something so close to a neighbor is not good. The town is seeing homes being torn down, the Henrys love their porch; this is wrong and the Board should see this from the point of the residents next door. Mr. Giunco explained that the applicant comes to the town officials and asks what needs to be done to design a home that complies and that is what happened here, the Nolans are not wrong. At this point Chairman Hall reminded all the people speaking, do not reprimand each other, the Board will not tolerate it.

Mr. Giunco asked Mrs. Kregg if she felt there is a balance here and Mr. Liston objected, so Mr. Giunco stated that the clients' architect took the plans to the Zoning Officer and they were approved. Mrs. Kregg still felt the Planning Board should take into consideration the reasoning stated before. She went back to the time she asked for a variance for a porch and was denied, and then the Board gave a variance to the Daveys for a porch. She saw a hardship for the Henrys, but Mr. Montenegro again stated to her and the rest of the audience & Board that this is not about hardship or a variance. The question here is does the plan comply with the Ordinance as written.

Mrs. Brisben tried to explain to Mrs. Kregg that the Board has to follow the Ordinance as written and has no power to change any Ordinances, that comes from Mayor and Council. Mr. Cerami asked if the Board determines this, what is the next step with hardship and Mr. Giunco told him there is no hardship here, only the Governing Body can change an Ordinance, not the Board as was just stated.

Mr. Sweeney came forward again and felt the Burden of Proof is on the Appellant and he felt the neighborly thing to do is run this by the neighbors before going for a plan. Mr. Giunco said if the rules apply and there are no variances needed, aren't they complying? Mr. Sweeney did not feel they were in this situation.

Next to come forward was John Shibles of 657 Ocean Avenue, who was sworn in. He did not like to hear of a neighbors' dispute, in looking at what was presented, it appears the applicants followed the law and the neighborhood scheme could perhaps be looked at through the Master Plan. There are a number of detached garages in town as well as attached garages in the First Avenue/Morven Terrace area. He felt there may be inconsistencies here and perhaps it should be addressed down the road.

As there were no more public comments, that portion of the hearing was closed and Chairman Hall declared a 5 minute break at 10:25 pm. The Board reconvened at 10:30 pm and Chairman Hall stated there was one more witness

to testify; Susan Nolan came forward and was sworn in, she and her husband are the owners of 900 Second Avenue. She has heard all the comments and felt they have been painted with malicious intent; they were going to renovate the existing home but it would need so many variances they decided to demolish it and start over with a new home that complies. They did have a plan for a new home with a garage in a different area but they would need a variance for that; before proceeding they tried to speak to Mrs. Henry about the plans but she would not speak to them on the matter.

Mrs. Nolan felt there was a safety issue with having a garage on The Crescent as it is a busy street and they have small children, so they made their decision on safety and not aesthetics. They then donated their home to Habitat for Humanity as well as letting the Fire Company drill on it, they had no idea all this was going to happen after this and again stated there was no malicious intent, they wanted a variance free plan. Mr. Liston asked her about the wood covering the windows and Mrs. Nolan said the windows are not safe anymore and had to be boarded up. Mr. Liston then asked her how much she paid for the home and Mr. Giunco objected and told her she did not have to answer this question; Mrs. Nolan told Mr. Liston she did not know exactly. Mr. Liston continued and told her the garage would block the view of the Henrys but Mrs. Nolan felt it will open the view up and was, actually, not exactly sure what view there is here as the porch faces Second Avenue. Mr. Liston said that Mrs. Henry told her the garage would block her view and Mrs. Nolan said Mrs. Henry told her she felt that was a side yard and not a rear yard.

Mr. Giunco once again stated all complies and the Ordinance is spelled out this way, the Zoning Officer and Board Engineer agreed on this. However, Mr. Liston disagreed with the Ordinance interpretation and again referred to Section 17-5.1(e) that has been discussed all night which shows a garage cannot be where it is proposed. He felt the Nolans should rethink their plans and come back with an application with a variance request for a garage in their front yard with access to Second Avenue. He also referred to 17-6.2 where more than 60% of properties are developed at a 40 foot setback this should apply and this block meets this criteria.

At this point the Board went into discussion and Councilman Buonocore had no comments at this time. Mr. Benson felt this is an unusual lot with 3 sides, if the 40 ft. guideline that Mr. Liston referred to is applied to this oddly shaped block, than he felt nothing could be built here. Mr. Montenegro, once again, explained that the Board's role is to look at the Zoning Officer's determination that Washington Boulevard is the Front Yard and the home meets the criteria needed. The Henrys think that is inaccurate so at the end of the day the Board has to decide if the Zoning Officer's determination applies to this plan. He also again reminded all that there is no variance here or redesign that

is not before this Board. Mr. Benson then said he accepts the Zoning Officer's determination based on the explanation from Mr. Montenegro.

Mr. Laws had no comments and Mr. Randazzo agreed with Mr. Cerami's thoughts earlier on Section 17-5.1(e) and that existing homes on these triangular lots in town have attached garages; he felt both the Zoning Officer and Board Engineer could have thought a little more about triangular lots. He also referenced the Davey property and the garage in the front yard and said he would be against the Zoning Officer's & Board Engineer's determination and felt an attached garage would work here. Mr. Cerami did agree with the front yard setback issue but felt that there should not be a detached garage, every odd shaped lot needs a variance and he felt the Nolans should go for one; he would be in support of the appeal as presented.

Mr. Ferguson said that, after hearing Counsel and the laws he has a point but there is the issue of the right thing to do, do you want to look at a garage from your front porch? It may be in the code but he did not think this situation was meant to be created and what is built there will be there for a long time. That is why there are judges and he believed that with a little bit of effort with designing everyone could be happy. Mrs. Brisben felt the Zoning Officer was compelled to follow the Zoning Ordinance, she agreed with the comments on reasoning, but what is written is what has to be followed and if changes need to be done to the Ordinance that would be the job of Mayor and Council, the Zoning Officer and Board Engineer can only work with what they have in the Code Books. She would approve a variance for a front yard setback for a garage if they came back.

As there were no further comments or discussion, Chairman Hall asked for a motion to grant the appeal of the Henry family and a motion was made by Mr. Cerami to grant the appeal, this seconded by Mr. Randazzo and the appeal to overturn the Zoning Officer's determination was approved by the following roll call vote:

Ayes: Councilman Fred Buonocore, Paul Cerami, Robert Ferguson,
Norman Hall, Chris Randazzo

Noes: Larry Benson, Karen Brisben, Donald Laws

As there was no other business to come before the Board a motion to adjourn was made by Mr. Cerami, seconded by Mr. Randazzo and unanimously approved, all aye. The meeting was adjourned at 10:55 p.m.

Approved:

Wednesday, November 16, 2011