

SEA GIRT PLANNING/ZONING BOARD  
REGULAR MEETING  
WEDNESDAY, JULY 21, 2021

The Regular Meeting of the Sea Girt Planning Board was held on Wednesday, July 21, 2021 at 7:00 p.m. virtually. In compliance with the Open Public Meetings Act, notice of this Body's meeting had been sent to the official newspapers of the Board and the Borough Clerk, fixing the time and place of all hearings.

Before roll call was taken, Council President Donald Fetzer (who is taking over for Mayor Ken Farrell, who resigned), was sworn in to 12/31/21; roll call was then taken:

Present: Councilwoman Diane Anthony, Karen Brisben, Jake Casey, Council President Donald Fetzer, Stan Koreyva, Eileen Laszlo, Ray Petronko, Robert Walker, John Ward, Norman Hall, Carla Abrahamson

Absent: None

Board Attorney Kevin Kennedy was also present, Board Engineer Peter Avakian was absent, and Board Secretary Karen Brisben recorded the Minutes. Mrs. Brisben noted an error in the Minutes for June (found by Mr. Ward) they were corrected and, on a motion by Councilwoman Anthony, seconded by Mr. Casey, the amended Minutes for 6/16/21 were approved, all aye.

It was then announced that the application for variance relief for Block 86, Lot 10, 610 Chicago Boulevard, owned by Birgit Graham was being postponed to the Wednesday, September 15<sup>th</sup> meeting of the Planning Board. The applicant had asked for this postponement as there was an error found with the plans; new notices will be sent out for the next hearing.

Before going on Chairman Hall asked if anyone in the audience had any questions on any matter other than the applications this evening; there was no response. Mrs. Brisben then gave her email address for anyone who was having problems logging in.

**OLD BUSINESS:**

As Mayor Farrell had resigned as Mayor and he held a position on the Planning Board for many years, Mr. Kennedy had been requested to write a Resolution honoring Mayor Farrell for his years of service and the following was presented for approval:

WHEREAS, the Sea Girt Planning Board is a duly organized Land Use Board, operating and existing in accordance with the laws of the United States of America, the State of New Jersey, and the Borough of Sea Girt; and

WHEREAS, from approximately 2005 to 2021, Ken Farrell has dutifully served the Borough of Sea Girt and the Sea Girt Planning Board; and

Wednesday, July 21, 2021

WHEREAS, over the said years, Ken Farrell has served the Borough / Board in the following capacities:

- Mayor;
- Councilman;
- Planning Board Member;
- Member Southern Monmouth Regional Sewerage Authority; and

WHEREAS, in the aforesaid capacities, Ken Farrell has provided invaluable leadership, commitment, help, guidance, and assistance to all Members of the Community, including, the Members of the Planning Board; and

WHEREAS, his keen insight and commitment to Zoning have greatly contributed to the effectiveness and efficiency with which routine and complex development applications have been adjudicated; and

WHEREAS, it is with regret, that the Planning Board representatives have recently learned that after many years of fine service to the Borough of Sea Girt, Ken Farrell has retired from the Office of the Mayor;

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

1. That the Sea Girt Planning Board hereby respectfully acknowledges the many years of distinguished leadership / guidance / service / friendship provided by Ken Farrell.
2. That the Planning Board hereby officially thanks Ken Farrell for his many years of dedicated and tireless service to, and for the benefit of, the Borough of Sea Girt, the Sea Girt Planning Board, and the residents of the Borough of Sea Girt.
3. That the within Resolution shall serve as a document perpetually memorializing heartfelt thanks for the efforts of Ken Farrell.

The above Resolution was approved on a motion by Mrs. Laszlo, seconded by Councilwoman Anthony and then by roll call vote:

Ayes: Carla Abrahamson, Councilwoman Diane Anthony, Karen Brisben, Jake Casey, Council President Donald Fetzer, Stan Koreyva, Eileen Laszlo, Ray Petronko, Robert Walker, John Ward, Norman Hall

Noes: None

The Board then turned back to the agenda and considered the approval of a Resolution for Variance Relief for Block 57, Lot 9, 410 Washington Boulevard, owned by Frances Pierce, to allow a deck. Mr. Kennedy went over the proposed Resolution and noted he was waiting for the correct measurements on the deck and screened porch from the Architect as they had been changed; he also added the comments from Michael Rubino, Esq., the applicant's attorney, regarding ADA comments and has the right to do litigation if it arises. Mr. Kennedy said he has made the Resolution to be as thorough as possible if litigation happens, so it is long.

The following amended Resolution was then presented for approval:

### **INTRODUCTION**

**WHEREAS**, Frances R. Pierce has made Application to the Sea Girt Planning Board for the property designated as Block 57, Lot 9, commonly known as 410 Washington Boulevard, Sea Girt, New Jersey, within the Borough's District 1, East Single-Family Zone, for the following approval: Bulk Variance associated with an Application to construct a screened porch and a deck to an existing single-family home; and

### **PUBLIC HEARINGS**

**WHEREAS**, the Board held remote Public Hearings on May 19, 2021 and June 16, 2021, Applicant having filed proper Proof of Service and Publication in accordance with Statutory and Ordinance Requirements; and

### **EVIDENCE / EXHIBITS**

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

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

- *Architectural Plans, prepared by Richard Villano, AIA, dated January 6, 2021, introduced into Evidence as A-2;*
- *Survey, prepared by William J. Fiore, PLS, dated December 19, 2019, introduced into Evidence as A-3;*
- *Review Memorandum from Leon S. Avakian, Inc., dated May 9, 2021, introduced into Evidence as A-4;*
- *10-pictures of the subject property, with the Applicant's handicap sticker / placard, introduced into Evidence as A-5;*
- *Communication from the Applicant's Attorney to the Board Secretary, dated June 3, 2021, introduced into Evidence as A-6;*
- *Revised Development Application Package, introduced into Evidence as A-7;*
- *Architectural Plans, prepared by Richard Villano, dated January 4, 2021, last revised May 26, 2021, introduced into Evidence as A-8;*
- *Communication from the Applicant's doctor, introduced into Evidence as A-9;*
- *Pictures of the projected home (with proposed additions), introduced into Evidence as A-10;*
- *Affidavit of Service; and*
- *Affidavit of Publication.*

**WITNESSES**

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

- Frances R. Pierce, Applicant;
- Richard Villano, Architect
- Joe Sciamarell, the Applicant's Builder;
- Joseph Kociuba, Engineer / Planner;
- Michael R. Rubino, Jr., Esq., appearing
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**TESTIMONY AND OTHER EVIDENCE PRESENTED ON BEHALF OF THE APPLICANT**

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

- The Applicant is the Owner of the subject property.
- The Applicant has owned the subject property for approximately 40 years.
- A 2-story single-family home exists at the site.
- Recently (in or about October of 2020), the Applicant arranged for several additions / improvements (approximately 350 SF) to be constructed at the site – including a kitchen, a new bathroom, new flooring, and other improvements.
- The Applicant is approximately 80 years old.
- The Applicant recently suffered some medical issues which compromised her mobility.
- In conjunction with the above point, the Applicant submitted a handicap sticker / placard into the Record as Evidence.
- The Applicant now proposes to construct a screeded-in porch and a new deck.
- Because of the Applicant’s mobility issues, and because of the grading of the existing home / property, the Applicant proposes to construct a screeded-in porch and proposed deck at the same level as the existing home (so that one can avoid having to utilize steps to travel between the existing home and the proposed porch / deck).
- Details pertaining to the proposed improvements (as amended) include the following:

	<b>Screened-In Porch</b>	<b>Deck</b>
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Size:	19' X 17'8" (approximately 322 SF)  (Per Plans)	Per plans (irregularly shaped)  (Approximately 24.8' X 8'1", for a portion of the same)  (Approximately 338 SF)
Location:	Southeastern portion of the property (per plans)	Southwestern portion of the property (per plans)
Enclosed?:	Yes (screened-in porch)	The deck will not be enclosed – rather, the same will remain open.
Elevation off of ground:	Approximately 4'-5' off of the ground	Approximately 4'-5' off of the ground
Ground materials:	Not applicable	The material beneath the porch will remain sand, dirt, and other natural materials (i.e. no pervious surfaces).
Material to bridge physical gap between the ground and the elevated structure:	Lattice (per plans)	Lattice (per plans)

- Upon completion of the renovation process proposed herein, the 1<sup>st</sup> floor of the Applicant's home will include the following:

FIRST FLOOR

Kitchen

Dining Room

Living Room

Master Bedroom

Master Bathroom

Dinette

Family Room

Deck

Screened-In Porch

Bathroom

Mud Room

Garage

- The Applicant anticipates that the construction work will be completed in the near future.
- The Applicant will be utilizing Licensed Contractors in connection with the construction process.

### **VARIANCE**

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

Variance:

*BUILDING COVERAGE: Maximum 20% allowed; whereas 22.41% proposed.*

### **PUBLIC COMMENTS**

**WHEREAS**, sworn comments, questions, and / or statements regarding the Application were presented by the following members of the public:

- Sheryl Goski, Esq.
- Julie Murray

### **FINDINGS OF FACT**

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

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

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

2. The subject property is located at 410 Washington Boulevard, Sea Girt, New Jersey, within the Borough's District 1, East Single-Family Zone.

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

4. Single-family use is a permitted use in the subject Zone.

5. In order to increase the functionality of the existing home, and in order to increase handicap-accessible useable space, the Applicant proposes to construct several improvements.

6. The proposed improvements include the following:

- Construction of a screened-in porch; and
- Construction of a deck.

7. Details pertaining to the proposed improvements were identified on the Plans, were discussed at length during the Public Hearing process, and are elsewhere identified herein.

8. Such a proposal requires Bulk Variance approval.

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

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

- Initially, there was a concern expressed by a neighbor as to whether the public notice sent by the Applicant complied with Prevailing Legal Requirements. Specifically, the affected neighbor was of the belief that the notice was not sufficient, because the same was not sent to where she currently resides, but rather, the same was sent to a different location, as identified on the property owner's list prepared by the Borough of Sea Girt, and / or Agents thereof. (It appears that the Applicant ultimately received the notice, but not 10-days in advance of the Hearing date.)
- It was explained that the Applicant's representatives are required to serve notice to the individuals / entities set forth on the Borough-prepared property owner's list, and to the addresses specifically referenced therein.
- The Board representatives also advised that, per Prevailing New Jersey Case Law, an Applicant is entitled to rely upon the accuracy of the Borough-prepared property owner's list, even if the same were to contain inaccurate information.
- There was no evidence presented that the Borough-prepared property owner's list was in any way inaccurate.
- The Applicant's notice complied with all Prevailing Provisions of the New Jersey Municipal Land Use Law (in that the same was sent to the individuals / addresses set forth on the Borough-prepared list).
- The Applicant's notice complied with all Prevailing Provisions of the controlling Borough of Sea Girt Zoning Ordinance.
- The Board Attorney also explained that, pursuant to New Jersey Municipal Land Use Law, and associated Case Law, the Applicant only has the burden of proving that the notice was sent to the correct individual, at the correct address – and that there is no requirement that the affected neighbors actually receive the notice. (Clearly, it is envisioned that if the notice is sent to the correct individual, at the correct address, timely and efficient notice will be effectuated.)

- Under the circumstances, the Board Attorney recommended that notice was effectuated in accordance with Prevailing Provisions of the New Jersey Municipal Land Use Law.
- Additionally, the legal representatives publicly commented how fortunate it was that notwithstanding the issue, the affected neighbor did, in fact, receive actual notice of the Hearing, and that the affected neighbor, an Attorney at Law, was able to physically log-in to the meeting and participate in the Hearing. That is, the Board took comfort in recognizing that the affected neighbor was physically logged-in (for the remote meeting), so that she could hear the testimony and evidence presented, participate in any discussions, issue comments in support or against the Application, conduct cross-examination of the Applicant's lay and professional witnesses, and / or bring forth her own witnesses.
- Moreover, as an additional safeguard, citing the intersection of legal requirements, transparency, and the likelihood of litigation / appeal, and in the interest of promoting neighborly relations, the Board Chair publicly suggested that no vote take place at the initial meeting (May 19, 2021), so that the affected neighbor would specifically have more time to review information, review plans, review prior testimony, consult with her own professionals, if deemed necessary, etc.
- As referenced, after the first Hearing (May 19, 2021), the Application was carried to June 16, 2021, so that, among other things, the affected neighboring property owner could more thoroughly review the Application, and the component parts of the same. (The Application was also adjourned, after the testimony on the first night, so that the Applicant's representatives could more formally consider some of the questions / comments / concerns of the Board Members.)
- As referenced, the Public Hearing was adjourned to June 16, 2021, and the affected neighbor (as well as other members of the public) were provided with an opportunity to participate in the continued Land Use Board process (in accordance with Prevailing Case Law / Protocol).
- The Applicant's representatives testified that the elderly Applicant has some physical conditions which compromise / restrict the Applicant's mobility.

- As referenced, there was fairly extensive / specific testimony presented relative to the physical conditions / limitations of the Applicant – but, for privacy purposes, and so as to comply with the spirit and intent of the Prevailing HIPPA Regulations, the author of the within Resolution has specifically chosen to withhold the specific medical details.
- Sufficed to say, the elderly Applicant suffers from certain documented mobility issues.
- The Applicant’s representatives also submitted a picture of the Applicant’s handicap sticker / placard, memorializing the Applicant’s official disabled status.
- The Applicant’s representatives also testified as to the Applicant’s personal familial circumstances as well (the details of which are not specifically set forth herein).
- The Applicant’s representatives testified that because the existing home has an elevated grade, that the proposed improvements (screened-in porch / proposed deck) need to be elevated at the same grade level (for, if not, the Applicant, with her mobility limitations, would be forced to navigate a number of steps and other hurdles to cross / travel from the existing home to the proposed porch / deck).
- The Board is also aware of the nuanced Building / Construction Ordinance / Code Regulations associated with the within Application. Specifically, if the proposed deck were 18” or lower (from the existing grade), the said deck would not count as building coverage and thus, no Building Coverage Variance relief would be required. However, because the deck approved herein will sit higher than 18” above the existing grade, the same does, in fact, count as building coverage (and hence, a Building Coverage Variance is required).
- The Applicant’s representatives testified that the Applicant’s proposed deck needs to be elevated (i.e. more than 18”) so that the deck surface will be equal / level with the existing home (so as to facilitate the ease with which one can travel from the existing home to the porch / deck approved herein).
- The Applicant’s representatives also argued, among other things, that the Applicant’s special / personal circumstances constituted a hardship within the meaning of the New Jersey Municipal Land Use Law, thereby justifying Variance relief.

- The Applicant's representatives also argued that under Prevailing ADA (American with Disability Act) Regulations, the Board is required to make / provide reasonable accommodations for the Applicant. The Applicant's representatives further argued that, in the within circumstances, the granting of a Building Coverage Variance does, in fact, constitute a "reasonable accommodation".
- In addition to the above, the Applicant's representatives also argued that the Applicant was entitled to Building Coverage relief because the benefits of granting the aforesaid Variance out-weighed any detriments associated therewith.
- Some members of the public, and some members of the Board, had several questions / comments / concerns / objections associated with the Application, and the requested coverage relief.
- Some objections to the Application involved the idea that other physical improvements were just constructed at the site – and that had the Applicant desired to provide for seamless transitions between the home (a legitimate development goal), she could have done so without the need for invoking the need for any Variance relief. That is, there was an argument that the Applicant's personal circumstances could have been factored into the improvements which were previously constructed at the site, thereby necessitating the need for any further construction work, let alone any Variance relief.
- Other objections associated with the Application involved the idea that had the Applicant's recently completed additions been smaller in scope, then, in that event, the Applicant could construct a compliant new deck / porch (as opposed to having to seek Variance relief).
- Other objections associated with the Application concerned the idea that, under the circumstances, there could be an element of "bad intent" associated with the timing of the Variance-free additions (recently constructed) and the proposed deck / porch improvements (which require Variance relief).
- Other objections associated with the Application concerned the idea that a simultaneously constructed project (as opposed to a so-called Variance-free phase and a Variance

phase) would have been more appropriate, more transparent, more efficient, and more compliant.

- Other objections associated with the Application concerned the idea that, under the circumstances, one could argue that the Applicant's actual completion of the recent additions is now, essentially, being utilized to justify the Variance relief associated with the so-called phase 2 portion of the project (i.e. the porch / deck approved herein).
- Other objections associated with the Application concerned the idea that the Applicant's personal hardship is not an appropriate basis upon which Variance relief can or should be awarded.
- Other objections associated with the Application involved the notion that the Applicant's hardship was not associated with the specific land / property, but rather, with the Applicant's personal circumstances.
- Other objections associated with the Application involved the notion that the proposed porch / deck were just too large, and that the same should be reduced so as to comply with the Prevailing Building Coverage Requirements (or at least more closely comply with the Prevailing Building Coverage Requirements).
- Other objections associated with the Application involved the notion that the Applicant could and should propose a smaller deck / porch, so that the need for Variance relief, or the nature / extent of the same, would be reduced, if not eliminated.
- Other objections associated with the Application concerned the notion that the Applicant should have designed, and could have designed, a more overall compliant proposal.
- Other objections associated with the Application included the notion that if the deck or the porch were eliminated, there may not be a need for any Variance relief.
- Other objections associated with the Application involved the notion that perhaps the Applicant's lot is not sufficient to accommodate both the proposed deck and the proposed porch.

- Other objections associated with the Application involved the notion that, under the circumstances, the need for Variance relief could be eliminated and / or reduced if the Applicant chose only to pursue a porch or a deck (as opposed to both a porch and a deck).
- Other objections associated with the Application involved the notion that Board Members are typically apprehensive about deviating from the maximum allowed building coverage – given the potential issues associated with such excess building coverage.
- Other objections associated with the proposal involved the notion that zoning should occur through, and in compliance with, Prevailing Zoning Regulations – as opposed to zoning through Variance.
- Other objections associated with the Application involved the notion that the Applicant’s proposal does not, in fact, represent a better overall zoning alternative for the Borough of Sea Girt.
- Other objections associated with the Application involved the notion that approval of the Application, under the prevailing circumstances, could serve as a troubling precedent for future relief.
- Other objections associated with the Application involved the notion that the Applicant’s Americans with Disability (ADA) arguments were misplaced, or potentially misplaced.
- Other Objections associated with the Application involved the notion that the granting of a Building Coverage Variance would not appear to be traditional “reasonable accommodation” within the known meaning of the ADA.
- Other objections associated with the Application involved the notion that specific / sufficient legal evidence / Case Law / references were not presented / cited to justify the Variance relief under the auspice of a “reasonable accommodation” under the ADA.
- Other objections associated with the Application involved the notion that a vote on the matter (given the ADA-arguments) should be delayed / adjourned pending further review / research of the ADA-related issues.

- Other objections associated with the Application involved the notion that blindly granting Bulk Variance relief as a “reasonable accommodation” could prove problematic in analysis of other similar and non-similar Variance Applications.
- Other objections associated with the proposal concern the notion that the more traditional “reasonable accommodations” in the context of an existing single-family home would generally tend to involve the installation of a wheelchair ramp, the installation of a stair lift, the installation of a handicap bathroom, the installation of a Van-accessible parking space on the site, and the like.
- The Applicant’s arguments contained valid and thought-provoking points, worthy of review and discussion. Likewise, the arguments of the Board Members and the Members of the Public also constituted valid and thought-provoking positions, worthy of official review / discussion.
- Over many hours during the two separate Public Hearings, the Board Members critically reviewed all aspects of the proposal, and the impact of the requested relief.
- Though the Board does not enjoy adjudicating Applications which cause, or appear to cause, tension between neighbors, the Board recognizes the absolute right of each property owner to prosecute / defend / object to any Variance associated with any land development application.
- The Board Members also recognizes the inherent right of each property owner / occupant to pursue development which promotes the general welfare.
- Likewise, the Board also recognizes the inherent right of every property owner / occupant to argue and advance that a particular Application does or does not promote the general welfare.
- The Board Members also recognize that any Development Application must be presented / adjudicated / argued in accordance with Prevailing / Customary Standards, as set forth in the New Jersey Municipal Land Use Law, associated Case Law, and the Borough’s Prevailing Ordinances.
- There was a wide range of opinions among the Applicant’s representatives, the Board Members, the Board

representatives, and the public – and all points of view were considered, respected, and analyzed.

- As referenced, there were some concerns that, as presented, the Applicant received administrative zoning approval to construct a conforming addition in or about 2020 – and that the Applicant is now seeking to construct additional improvements for which Variance relief is required. As such, there was a concern that more detailed / thorough planning could have resulted in only 1 collective Variance-free aspect of the development.
- While the Board Members certainly agree that one overall phase for the construction would be much more efficient (from an economic / practical / functional standpoint), there has been no evidence presented to suggest that the Applicant acted in bad faith.
- The Applicant's representatives testified that the Applicant's mobility issues / limitations essentially commenced after the so-called 2020 phase 1 aspect of the construction was underway. Likewise, the Applicant's representatives essentially testified that they were unaware of the Applicant's need for the elevated deck / porch when the so-called phase 1 aspect of the project was completed.
- That notwithstanding, the Board notes that an Applicant, i.e. any Applicant, can submit / process / prosecute any Development Application at any time, as long as complete plans are submitted, appropriate fees are paid, and legal notice is provided. (Clearly, the Sea Girt Planning Board is not required to approve any type of Application, just because the same was submitted.)
- The nature of the so-called 2 aspects of the overall improvement process (i.e. the Variance-free portion and the Variance portion associated with the within deck / porch) did not prevent the Board Members from thoughtfully and carefully reviewing the requested relief, and the impact the same would have on the subject property, the neighbors, the neighborhood, and the community at large.
- The Applicant's representatives, including the Applicant herself, described her personal familial / personal medical circumstances.

- Each Board Member appreciates the Applicant's heartfelt statements, and the Board Members certainly extend wishes to the Applicant for a speedy recovery, for good health, and for longevity.
- The Board Members can certainly understand the benefits of eliminating stairs from the equation so that the Applicant, who has mobility issues, can more freely / safely / conveniently / efficiently travel between the existing home and the proposed deck / porch.
- Given the natural elevated grade of the home / property, and the Applicant's mobility issues, there is a need for the proposed deck to be more than 18" off of the ground.
- Making the site more accessible for homeowners and guests represents a legitimate development goal – particularly if the same can be effectuated without causing substantial detriment to the public good.
- The Applicant's personal hardship, as testified to at length, is real.
- Respectfully, the Board Members recognize that the Applicant's personal hardships are, in fact, personal hardships (and not, in and of itself, the basis upon which Variance relief can be granted).
- Per New Jersey Municipal Land Use Law, and associated Case Law, the Board Members are required to rigorously review Zoning Applications. The Board Members are required to grant Variance relief when and if the so-called "positive" and so-called "negative" criteria are satisfied. The positive criteria involves the notion that the Application advances one or more purposes of the Municipal Land Use Law. Likewise, the "negative" criteria involves the notion that the Applicant must prove that the Application can be granted without causing substantial detriment to the public good.
- Likewise, the Board is also aware that in order for a "hardship" Variance to be granted, there must be some specific unique feature affecting the shape / topography of the land, or, in the alternative, the Applicant must prove that the benefits of granting the Variance relief outweigh the detriments associated therewith.

- The Board Members have reviewed the within Application in accordance with the aforesaid standards (and other applicable / appropriate standards).
- While the Board Members are sympathetic to the plight of the Applicant, personal hardship does not necessarily constitute a basis as to why Bulk Variance relief can be granted.
- In evaluating Variance Applications, Board Members must be cognizant that the Variance relief should not be granted because of an Applicant's personal circumstances. Rather, per New Jersey Municipal Land Use Law, and associated Case Law, Variance relief should only be granted if there is a physical hardship associated with the subject property and / or if the benefits of granting the Bulk Variance relief outweigh the detriments associated with the same. Likewise, as referenced, Variance relief can only be granted if there is a showing that the Application can be granted without causing substantial detriment to the public good.
- The Board Members are also aware that Variance relief is permanent, and runs with the land (unless otherwise abandoned).
- In the context of any "approval running with the land", the Board recognizes that at some point in time, the Applicant may no longer be the owner of the property – further reinforcing the idea that the approval needs to be based on the merits of the overall impact of the Variance and not based upon the personal characteristics / circumstances of 1 individual.
- Respectfully, the Applicant's personal circumstances, though unfortunate and challenging, do not constitute a hardship within the meaning of the New Jersey Municipal Land Use Law.
- However, the Board finds that there is, in fact, hardship associated with the subject property, which helps justify the requested Variance relief. Specifically, per the testimony and evidence presented, the existing elevation at the site is approximately 4-5 ft. above grade, and, as such, the existing home is already 4-5 ft. above grade – and, therefore, it only makes sense for the proposed deck / porch to be constructed at the same level as the existing home. A

majority of the Board accepts, understands, and acknowledges such an argument.

- The existing / unusual grade / elevation at the site calls for any improvements to be constructed at the same / equal level as the existing home.
- Construction of the proposed deck / porch at the same level as the existing structure will prevent any future owners / occupants from having to maneuver stairs in order to cross from one part of the existing home to the proposed deck / porch.
- If the proposed deck / porch were not constructed at the elevated level as proposed / approved herein, then, in that event, a series of steps would need to be constructed (to appropriately address the referenced grade differential).
- While the inclusion of stairs for the deck / porch would be an acceptable option for some, the Board is aware that many individuals, including elderly individuals, prefer to have the option to avoid stairs whenever necessary / appropriate.
- The elimination of the stairs in the said situation (associated with the proposed deck / porch) will facilitate the ability of individuals to more freely / safely / efficiently / comfortably travel throughout the to-be-expanded home.
- Improving the ease and ability for one to safely / efficiently travel throughout a to-be-expanded house is recognized as a legitimate development goal – particularly if the same can be effectuated without causing substantial detriment to the public good.
- The 4-5 ft. elevated nature of the existing grade at the site does, in fact, constitute an exceptional and extraordinary situation which uniquely affects the subject property.
- A majority of the Board finds that if the requested Variance relief were not granted, the 4-5 ft. existing grade deviation could constitute a peculiar and exceptional practical difficulty / hardship for the Applicant.
- As referenced, the above hardship (given the fact that the home is constructed above grade) does, in fact, help justify the requested Variance relief.

- For the reasons set forth during the Public Hearings, and for the reasons set forth herein, a majority of the Board has determined / found that the requested Variance relief can be granted because the benefits of the same outweigh any detriments associated therewith.
- Interestingly, the Board notes that because the deck is more than 18" above grade, the same does, in fact, count for building coverage (pursuant to the Prevailing Borough of Sea Girt Zoning Ordinances). Thus, the Board recognizes that had the exact same deck been built at grade, or less than 18" from grade, then, in that event, no Variance relief would have been required.
- Under the circumstances, an obvious line of thought would be to require the Applicant to construct the deck at the site (18" or below), so as to not require any Building Coverage Variance relief. However, as previously referenced, the existing elevation / grade at the site requires the proposed deck to be constructed more than 18" above grade.
- That notwithstanding, the Board Members recognize the technical nuances associated with the within Application.
- Some Board Members had no objection from the proposed deck / porch being elevated to the same level as the existing house. However, some of those same Board Members were, nonetheless, concerned about the actual size of the proposed deck / porch.
- As initially submitted, the Applicant sought approval to construct a 10 ft. wide deck and a 21 ft. wide porch, which resulted in an overall building coverage of approximately 23.26%.
- As referenced, some Board Members were also concerned about the size of the proposed deck / porch.
- As a result of the above, the Applicant's representatives ultimately revised the plans so as to reduce the size of the deck to approximately 8' wide X 24'8" and to reduce the size of the porch to approximately 17'8" X 19' (so as to reduce the overall coverage associated therewith).
- The 2 ft. reduction of the proposed deck / porch reduced the overall building coverage at the site from a non-complying

23.26% to a non-conforming 22.41% (i.e. a difference of approximately .85%).

- Some Board Members were moved / impacted / impressed by such a reduction.
- Some Board Members were not impressed with such a minor reduction in the overall size of the deck / porch.
- Additionally, it appears that some Board Members were not phased by the reduction in the size of the proposed deck / porch.
- The Board is also aware that the material beneath the deck will continue to be an impervious surface (sand, dirt, etc.) and that, as a condition of the within approval, the material beneath the deck will remain as an impervious surface. The said issue was very reassuring to some of the Board Members – and the said issue helped justify the granting of the requested Variance relief.
- The Board Members are also aware that there is existing landscaping at the site, which will and can serve as a visual buffer to the proposed deck / porch.
- The Board Members are also aware, that, as a condition of the within approval, the existing / proposed landscaping is to be perpetually maintained / replaced / replanted, as necessary, so that the buffer, as aforesaid, will be permanent in nature as well.
- The Board is also aware that the deck / porch approved herein is not readily visible from the public street.
- The Board is aware that the materials associated with the existing deck / porch are architecturally / aesthetically consistent with the existing single-family home at the site.
- Though there was a fairly detailed discussion (during the Public Hearings) regarding the Prevailing ADA Regulations and the alleged need for the Board to provide “reasonable accommodations” to the Applicant, the issue was not fully adjudicated. The Board Members were rightly concerned about the impact any such determination / interpretation could have on the within Application, and any further / future Applications. Sufficient or persuasive legal arguments were

not presented on the ADA / reasonable accommodation issue.

- In conjunction with the above point, the Board Members agreed that it was appropriate to more formally review / research the ADA / reasonable accommodation issues (as part of the Board's annual review, etc.).
- The Board Members did not readily accept and / or reject the Applicant's ADA-related arguments – as it is assumed that such a nuanced issue would require much more in-depth legal research / analysis.
- Nothing contained herein shall be deemed to prevent the Applicant's representatives from arguing / advancing any ADA-related arguments in the event of any formal challenge to the approval granted herein.
- The Board members engaged in a civil and good faith debate on the merits of the application, the impact the requested relief would have on the site, the neighborhood, and the community as a whole. The good faith debate and analysis resulted in a so-called split vote; namely, 6 members voted to conditionally approve the application, while 3 members voted against the approval.
- Good faith, honest, and vigorous debate is a hallmark of a democratic nation, and the same is also a hallmark of a committed, passionate, and dedicated Planning Board.
- In accordance with prevailing NJ case law, the Planning Board Members are permitted, within reason, to discount all or a portion of a witness's testimony/arguments. In adjudicating the within application, with a 6 to 3 split vote, some Board members discounted some elements of the testimony/arguments presented by the Applicant's representatives. Likewise, some Board Members discounted some portion of the arguments made by some members of the public.
- The subject site can physically accommodate the renovations / improvements approved herein.
- The Applicant's renovation plans are reasonable under the circumstances and reasonable per the conforming and oversized nature of the existing Lot.

- Approval of the within Application will not have an adverse aesthetic impact on the site or the neighborhood.
- Approval of the within Application will make the existing home more functional, and approval will also improve the quality of life for the homeowner.
- Single-family use as approved / continued herein is a permitted use in the subject Zone.
- The location of the proposed improvements is practical and appropriate.
- Subject to the conditions contained herein, the renovations approved herein will not over-power / over-whelm the subject Lot.
- Upon completion, the renovation approved herein will not over-power / dwarf other homes in the area.
- The renovations approved herein are attractive and upscale, in accordance with Prevailing Community Standards.
- Approval of the within Application will not detrimentally affect existing parking requirements at the site.
- The siding of the improvements approved herein will architecturally and aesthetically match the existing home.
- The height of the renovated structure will conform with the Borough's Prevailing Height Regulations and therefore, no Height Variance is required.
- The renovated / expanded home approved herein will fit in nicely with the other homes in the neighborhood.
- The Board notes that the within property involves a Lot which satisfies and even significantly exceeds the Prevailing Lot Area Requirements. Had the Lot been undersized, the within Application may not have been approved.
- Sufficiently detailed testimony / plans were presented to the Board.

- The proposed improvements / renovations should nicely complement the property and the neighborhood.
- Subject to the conditions contained herein, the proposal will not appreciably intensify the single-family nature of the lot.
- Additionally, the architectural/aesthetic benefits associated with the proposal outweigh the detriments associated with the Applicant's inability to comply with all of the specified bulk standards.
- The architectural design of the renovated home approved herein will not be inconsistent with the architectural character of other single-family homes in the area.
- Subject to the conditions set forth herein, the overall benefits associated with approving the within Application outweigh any detriments associated with the same.
- Subject to the conditions contained herein, approval of the within Application will have no known detrimental impact on adjoining property owners and, thus, the Application can be granted without causing substantial detriment to the public good.
- Subject to the conditions contained herein, approval of the within application will promote various purposes of the Municipal Land Use Law; specifically, the same will provide a desirable visual environment through creative development techniques.
- The Application as presented satisfies the Statutory Requirements of N.J.S.A. 40:55D-70(c) (Bulk Variances).

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

## CONDITIONS

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

- a. The Applicant shall comply with all promises, commitments, and representations made at or during the Public Hearing process.
- b. The Applicant shall comply with the terms and conditions of the Leon S. Avakian, Inc. Review Memorandum, dated May 7, 2021 (A-4).
- c. The Applicant shall cause the Plans to be revised so as to portray and confirm the following:
  - The inclusion of a note confirming that the landscaping at the site shall be perpetually maintained / replanted / replaced, as necessary; and
  - The inclusion of a note confirming that the material beneath the deck shall always remain impervious, be it sand, dirt, or other type of impervious surface.
- d. Unless otherwise waived by the Board Engineer, grading / drainage details shall be submitted so as to further confirm the absence of any adverse impacts associated with the within proposal.
- e. The Applicant shall manage storm water run-off during and after construction (in addition to any other prevailing/applicable requirements/obligations.)
- f. The Applicant shall obtain any applicable permits/approvals as may be required by the Borough of Sea Girt - including, but not limited to the following:
  - Building Permit
  - Plumbing Permit
  - Electric Permit

- Demolition Permit

- g. If applicable, the proposed improvement shall comply with applicable Provisions of the Americans with Disabilities Act.
- h. If applicable, grading plans shall be submitted to the Board Engineer so as to confirm that any drainage/run-off does not go onto adjoining properties.
- i. The proposed structure shall comply with the Borough's Prevailing Height Regulations.
- j. The construction shall be strictly limited to the plans which are referenced herein and which are incorporated herein at length. Additionally, the construction shall comply with Prevailing Provisions of the Uniform Construction Code.
- k. The Applicant shall comply with all terms and conditions of the Review Memoranda, if any, issued by the Board Engineer, Borough Engineer, Construction Office, the Department of Public Works, the Bureau of Fire Prevention and Investigation, and/or other agents of the Borough.
- l. The Applicant shall obtain any and all approvals (or Letters of No Interest) from applicable outside agencies - including, but not limited to, the Department of Environmental Protection, the Monmouth County Planning Board, and the Freehold Soil Conservation District.
- m. The Applicant shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.
- n. If required by the Board / Borough Engineer, the Applicant shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.
- o. Unless otherwise agreed by the Planning Board, the approval shall be deemed abandoned, unless, within 24 months from adoption of the within Resolution, the Applicant obtains a

Certificate of Occupancy (if required) for the construction / development approved herein.

- p. **The approval granted herein is specifically dependent upon the accuracy and correctness of the testimony and information presented, and the accuracy of the Plans submitted and approved by the Board. The Applicant is advised that there can be no deviation from the Plans approved herein, except those conditions specifically set forth or otherwise herein. In the event post-approval conditions at the site are different than what was presented to the Board, or different from what was otherwise known, or in the event post-appraisal conditions are not necessarily structurally sound, the Applicant and her representatives are not permitted to unilaterally deviate or build beyond the scope of the Board Approval. Thus, for instance, if the Board grants an Application for an existing building / structure to remain, the same cannot be unilaterally demolished (without formal Borough / Board consent), regardless of the many fine construction reasons which may exist for doing so. That is, the bases for the Board's decision to grant Zoning relief may be impacted by the aforesaid change of conditions. As a result, Applicants and their representatives are not to assume that post-approval deviations can be effectuated. To the contrary, post-approval deviations can and will cause problems. Specifically, any post-approval unilateral action, inconsistent with the testimony / plans presented / approved, which does not have advanced Borough / Board approval, and will compromise the Applicant's approval, will compromise the Applicant's building process, will create uncertainty, will create stress, will delay construction, will potentially void the Board Approval, and the same will result in the Applicant incurring additional legal / engineering / architectural costs. 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 Applicant is ultimately responsible for the actions of the Applicant, her Agents, her representatives, her employees, her contractors, her engineers, her architects, her builders, her lawyers, and other 3<sup>rd</sup> parties.**

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

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

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

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

FOR THE APPLICATION: Karen Brisben, Stan Koreyva, Eileen Laszlo, Robert Walker, Norman Hall

AGAINST THE APPLICATION: Councilwoman Diane Anthony, Jake Casey, Mayor Ken Farrell

NOT ELIGIBLE TO VOTE: Ray Petronko, John Ward

ABSENT: Carla Abrahamson

The foregoing Resolution was offered by Mrs. Brisben, seconded by Mrs. Laszlo and adopted by the following Roll Call Vote:

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

NOES: None

NOT ELIGIBLE TO VOTE: Carla Abrahamson, Councilwoman Diane Anthony, Jake Casey, Council President Donald Fetzler, Ray Petronko, John Ward

NEW BUSINESS:

The Board then turned to an application for variance relief for Block 23, Lot 6, 116 Baltimore Boulevard, owned by Michael Marzarella (Applicant – Paul Cerami), to allow demolition of an existing home and construction of a new home. Front yard Setback – 40 feet required, 27.18 feet existing, 28 feet proposed. Side Setback – 15 feet required, 10.06 feet existing, 11 feet proposed. Existing nonconformities; Driveway Width – 14 feet allowed, 21 +/- feet existing & proposed. Curb Cut Width – 13 feet allowed, 14 +/- feet existing & proposed.

The correct fees were paid, taxes are paid to date and the property owners within 200 feet as well as the newspaper were properly notified. Before the hearing started, Chairperson Norman Hall recused himself and asked Vice-Chairperson Eileen Laszlo to conduct this hearing; also Council President Donald Fetzler recused himself as well.

Mr. Kennedy asked the audience if anyone had an issue with the notice received if they received one and there was no response. He then asked Mrs. Brisben to give her email again in case someone was having a problem with the virtual meeting.

Mr. Kennedy then marked in the following exhibits:

A-1. The application

A-2. The Zoning Officer Letter of Denial dated 3/24/21.

A-3. Architectural plans dated 3/17/21, 6 sheets, done by Rice & Brown Architects.

A-4. Topographic Survey, dated 9/15/2020, done by Paul K. Lynch, Land Surveyor.

A-5. Board Engineer review letter, dated 6/17/2021.

Mr. Kennedy noted there are two attorneys present tonight for this hearing, Mark Aikins, Esq. for the applicant, who told the Board Mr. Cerami has lived at this address for the last 8 years; he is a business partner with Mr. Marzarella, the owner. The other attorney is Kevin Asadi, Esq. representing the Fontanas who live at 115 Baltimore Boulevard and are objectors. Mr. Kennedy asked if any Board member had a conflict with one or both of the attorneys and there were none so the hearing could proceed.

Mr. Aikins had two witnesses to swear in, Ray Carpenter, Engineer & Planner and Chris Rice, Architect and this was done. Mr. Aikins said this is a 100 year old home and asked Mr. Rice to testify on this application. Mrs. Laszlo said the Board is very familiar with Mr. Rice and accepted him as an expert witness, Mr. Asadi accepted him as well. Mr. Rice said this is an old Sea Girter and the issue here is the condition of the existing home, it was built differently than what is built today but the garage will be remaining and not taken down. The family wants to use this property as a permanent residence and it just needs two setback variances. He said corner lots are tough as they have to give up 5 more feet than if this were an interior lot. The existing home is a 1 ½ story home and is small, the property line on Second Avenue is 15 feet to the curb. The existing house is 27 feet from Baltimore Boulevard and 10 feet from Second Avenue. He is trying to propose a home that does not have height issues and said this is very difficult to design a home that fits in the Zoning regulations. This home has a 10 foot setback now and they are going to make that 11 feet; this is not a large mass of home and he has designed roof lines that will blend in.

Mr. Rice then put up Exhibit A-3, a copy of the rendering of the home which showed the steep roof lines to give this home a Sea Girt bungalow look; this decreases the mass of the home. He noted if this were on an interior lot they wouldn't be here for a variance, but on a corner lot they need variance relief as they are giving up 5 feet on one side and 15 feet on the other side. He then showed the other side of the home and said Mr. Cerami wanted a look of less mass, Mr. Carpenter can go over the site plan. He then showed the building elevation, front and right side and said it shows an A-frame roof line. Mr. Rice again said the home is in poor condition and the new home will be reminiscent of what is there now. The next elevation is the left side and rear of the home.

The Board then had questions of Mr. Rice. Mr. Walker asked if they were going to use the foundation that is there now and the answer was no, it is too deteriorated. Mr. Walker wanted confirmation about the garage staying and Mr. Rice said it is a newer garage and is staying. Mr. Walker said it looks like the other homes on this side of the street are set back farther and Mr. Rice agreed and said this home is on the corner and does not meet code now and it has been there a long time. Mr. Rice felt that, visually, this looks fine and is not changing it by much. Mrs. Brisben asked if the proposed home will be less intrusive into the Zoning code as the home that is there now and Mr. Rice said yes, this property will be more in conformity. If this application is denied they may have to try to redo the existing home that will still be in more violation. Mr. Ward questioned the two porches on the upper levels and that is creating a difference, Mr. Rice said they are going from a 1 ½ story home to a 2 ½ story home and they had to measure to the porch and the balconies let out more light. Mr. Ward asked what is the average home setback here and Mr. Rice felt it was in the high 30s and again said this would be different if this were an interior lot. He added they don't have a neighbor on the west side either, that is Second Avenue. Mr. Ward questioned the air conditioner units on the east side, if there are no homes on the west side can you put

them there? Mr. Rice said this move might be good for one neighbor but not the others, this can be discussed later.

Councilwoman Anthony asked if Mr. Rice had ever designed a home on a corner that did not need variance relief and Mr. Rice said he did not think so on a 50 foot lot, but he has done this for 75 foot lots. Councilwoman Anthony felt that some had been built without variances and Mr. Rice said he would have to look that up. Mr. Petronko asked how they came up with 11 feet for the side yard? Mr. Rice said the customer has to work with the Ordinance and what exists now is 10 feet; he said he travels this road a lot and has never noticed the 10 feet for the existing side yard. They are trying to make an effort as to conformity and this home will not be any wider than other homes, it may be a little smaller. If they took more off the home it would look so thin, they are trying to make work with a new home. Mrs. Brisben went back to the Engineer's report and asked about the mechanical equipment on page 4, item 2. Mr. Rice said they will comply with the Engineer's report.

As there were no more Board questions, the hearing was opened to the public for questions. John Lucid of 110 Seaside Place and asked Mr. Rice to address having a new home as opposed to an old home. Mr. Rice said the new construction is safer and better, the home will have egress windows in the bedrooms and will be more comfortable for families. Meg Lachance of 109 Baltimore Boulevard asked if the home were set back 40 feet would there be a small back yard? Mr. Rice said yes, the back yard would be reduced and the width of the home would have to be changed which would be a detriment to the shape of the home. Ms. Lachance asked if he had designed other corner homes in Sea Girt and the answer was yes, but they are larger lots. He did do one on a 50 foot lot but thought that needed variance relief, he did not know if he did any without variance relief.

Then Mr. Kevin Asadi, attorney for an objector, started asking questions of Mr. Rice. He asked if a new home can be designed for this lot and Mr. Rice said yes but it will not be as desirable and will not blend in the neighborhood. Mr. Asadi asked if he was asking for 30% in relief and Mr. Rice acknowledged this and said there is a bigger picture when you work on a corner, the architecture and style need to blend in the area. Mr. Asadi asked if this will look like the other homes and Mr. Rice said he would like to have different features such as more roof which will decrease mass, that was the intent here. Mr. Asadi asked if the home can be shifted and Mr. Rice said if you push this home back to 40 feet it would still need relief and that is very different, if not impossible, to do here. It was asked if they could comply with the Baltimore side and not the Second Avenue side and Mr. Rice said yes, but the existing home is there now at 27 feet and they are going to 29 feet setback. Mr. Asadi asked how much square footage is in the home there now and Mr. Rice said maybe 2,400 square feet of old construction, it was never measured and this was his guess. They went over the setbacks again and Mr. Asadi asked if this is affecting the neighborhood. Mr. Rice said the home is existing

at 18% building coverage and they are going to 19.4%, very little more, they are trying to capture what is there.

Mr. Asadi continued by asking if they increase the size of the home, will it affect the look on Second Avenue as being too large? Mr. Rice said there is 15 feet from the property line to the curb and he did not think this would be an issue, he worked with the roof lines and he could have built a box home but felt this type of home will look better. Mr. Asadi then asked about the height and Mr. Rice said it will be just under 35 feet high to the ridge, there is a steep sloping roof to reduce the mass and bulk of the home; he added the home really stops at the top of the second floor. Mr. Asadi asked about the average setback on Second Avenue & Baltimore Boulevard and Mr. Rice said he did not measure it as there is only one home at that block on Second Avenue. Mr. Asadi then asked about the lot to the east, did Mr. Rice look at that? Mr. Rice said he knew the lot and the driveway goes up the west side to the garage, there is a pool on the east side. Mr. Asadi asked about its front setback and Mr. Rice did not know if it is 40 feet but it matches 3 of the other homes. Mr. Aikins broke in at this time and felt this questioning was not relevant but Mr. Asadi did not agree and felt the other home should be known about. Mr. Rice said it can be viewed on Google Maps. Mr. Asadi said Mr. Rice was not familiar with this home to the east and Mr. Rice said correct. There was then a question of waiting for Mr. Carpenter, Engineer and Planner, to speak to answer some of his questions, but Mr. Rice continued on and again went over the setback and lines of the architectural plans. Mr. Asadi said it looked like the home is being moved closer to the street and Mr. Rice explained that where there once was a porch will now be a dining room. Mr. Asadi asked where, on the plan, is the existing home and where the new home will be and Mr. Rice said the two are very close. Mr. Asadi then asked to see the side elevations and this was done. Mr. Asadi commented it was a nice design and he would see what was being planned but can it be compared with what is there now? Mr. Rice said he had the Google Map and showed that.

Mr. Asadi continued his questioning and said he would like to see an overlay of what is there now and what is proposed and he would like to see how the home looks with 2 ½ stories. After this comment, he had no further questions.

Mrs. Laszlo asked Mr. Rice is this can be moved back 10 more feet off Baltimore and Mr. Rice said this would reduce the rear yard, the light and air and open space but it can be done, he would have to discuss this with the owners. Mr. Casey noted there is no soil boring report but what is planned for the basement? Mr. Rice said they had a soil boring done less than one year ago; the ceiling height of the basement will be 8 feet. Mrs. Brisben asked if it will be two feet above the high water line and Mr. Rice said yes, it has to be.

As there were no other questions, Mr. Ray Carpenter, Engineer & Planner, came forward to testify. As he was very familiar with this Board he was accepted as an expert witness, Mr. Asadi had no objection. Mr. Carpenter then went over the Engineer's report of 6/17/21, the variances are for the front yard setback on Baltimore and Second

Avenue, the driveway is 21 feet wide where the maximum is 14 feet, this is pre-existing. He agreed with all that was in the Engineer's report and they will comply. Nothing is out of order and they can reduce the curbcut if the Board wants it; they are asking for a Flexible C-2 variance and said the benefits outweigh the detriments. He looked at the possible renovation of the existing home and said it would be extensive and they may have to make changes more than what is allowed and would have to come back before the Board anyway, a lot of pressure would be on the owners. He felt they would rather have a new pie than a messed up old pie. He also noted the fire protection and other safety features that would be done on a new home. The porch does encroach into the front yard setback but it is not a big intrusion, it will be a 34 foot wide home and noted most homes are 35 feet wide so this will be more compliant with other homes in this area. If the home were moved back it would not be a pleasing, they are not building a huge house here but it could have been made bigger; they also are making a stormwater management plan and this home will be in more conformance with other new homes. He agreed with Mr. Rice that this would be different if it were an interior lot and he felt the Board should grant the variance relief as this is not detrimental to the Zone Plan or Zoning Ordinance. Mrs. Laszlo asked if Mr. Carpenter had any other diagrams for Baltimore and Second and the answer was no, if you look at the Google maps all seems to comply.

There were then questions from the Board: Mr. Koreyva asked if there is any reason they can't move the home back from an Engineering standpoint? Mr. Carpenter said no, but you are forcing the Ceramis' to lose their rear yard and privacy is an issue. Mrs. Brisben asked about the trees that are existing there and Mr. Carpenter did not know but said they will save the trees if possible. Mr. Casey asked how many feet it is from the property line to the sidewalk and was told 5 or 6 feet. Mr. Casey then asked if there is more green space on a corner lot because of an easement and Mr. Carpenter said some is municipal property and is added as visual. Mr. Rice said it will look greater than 15 feet.

As there were no further Board questions, Mr. Asadi started his questioning. He asked if there was a more detailed plot plan and Mr. Carpenter said there was one but it never got submitted to the Board but said it is similar to what Mr. Rice showed; his plan did have on it some grading and drywell/drainage information. Mr. Asadi asked if, as a Planner, he would say this is diminimis? Mr. Carpenter said that is a subjective term and he felt it was abused. In this application they are trying to give back some land and the size of the home will be similar to other homes on Baltimore Boulevard. They are putting in a porch here, they could eliminate the columns but really the home is 34 feet wide, the house just out on the front porch with a 30 foot setback; exhibit 2 was shown as per the request from Mr. Asadi. Mr. Rice commented all this was gone over earlier but Mr. Asadi felt he may have testified differently to which Mr. Rice said no, all this was said before. Mr. Asadi again asked Mr. Carpenter if this was diminimus and this time Mr. Carpenter said yes.

Mr. Asadi then asked if someone would see that it is more than what there before and Mr. Carpenter said no, it is not marked out but there is a lot of green, there is 15 feet instead of 10 feet using the municipal property; a person would not have any idea as to where the property line was, most would not even notice. Mr. Asadi then asked if the home itself would be more noticeable and the answer was no. Mr. Asadi asked Mr. Carpenter about the home to the east and if he studied it and Mr. Carpenter said he was at the site but did not analyze it. Mr. Asadi asked if Mr. Carpenter knew the size and variances on that home and Mr. Carpenter said no, he did not do an average and noted all the homes looked like they were about 40 feet back; there are only two lots on Second Avenue. Mr. Asadi asked about the square feet in the existing home and in the proposed home and Mr. Carpenter told him that is an architectural question, as well as Mr. Asadi's question about the height of the basement. Mr. Asadi asked if the basement can be finished and Mr. Carpenter said yes, to which Mr. Asadi asked about the building codes; Mr. Carpenter said that is an architectural question. Mr. Asadi asked about the air conditioning units and Mr. Aikins said that has already been addressed. Mr. Aikins asked Mr. Carpenter about the green space distance between the north line to the curb line at Baltimore and the answer was 20 feet.

As there were no more questions from Mr. Asadi the hearing was opened to the public for questions to Mr. Carpenter. Tom Leahy of 106 Baltimore Boulevard was sworn in and had comments, Mrs. Laszlo stopped him and explained this is questions only, public comments will be heard later.

At this point in time there was a brief discussion to have a setback study done of the neighborhood, Mr. Ward felt this was relevant, however, the rest of the Board felt the Google map showed the lines well. Mr. Aikin said that, when the Board looks at the strict numbers the setback does not comply, but with the testimony from both Chris and Ray, compromises have been made for the setbacks and aesthetic creations. For reasons by both Chris and Ray he believed the setback variance should be granted.

Mr. Asadi said he had two witnesses to call and Victor Fontana, 115 Baltimore Boulevard who lives across the street from this property, came forward and was sworn in. He has lived in his home since 1990 with his wife and he disagreed with the variance request. He said this home has never fitted in the neighborhood while it being so close to the street. A bulky home is not the fabric of the neighborhood and he didn't know of any home here that had variances. It's not just 30%, the house stands out and has been that way and the street does not have any non-conforming homes, he felt they can rebuild a home that fits. They look at that space from their sunroom and they do not want to look at a 35 foot high structure; the bulk of the home will be expanded and the house will be twice the size. Mr. Fontana thought the existing home was about 1,400 square feet and the proposed home will be over 3,000 square feet. He sees new 50x150 foot lots and has not seen them asking for variances. Mr. Asadi asked if the home were moved a foot or two back would it make a difference and Mr. Fontana said no, because the new home will be so much bigger. Mr. Aikin asked Mr. Fontana if the

application were to propose a 40 foot setback with a home peak of 35 feet would that be acceptable? Mr. Fontana said if it were within the rules it would be no problem. Mr. Aikins said one of the options is to renovate the existing structure and go to the back of the home and Mr. Fontana said he would have to see the design. Mr. Aikins said there would be no change to the façade, it would all be behind the building, Mr. Fontana said this would be better, it would comply.

Mrs. Laszlo reminded that the Board had to move on, time was going by. Mr. Asadi then called Barbara Ehlen of Beacon Place, Colts Neck, who is a Licensed Planner. As she has given testimony before, she was considered an Expert Witness and was sworn in. She has seen the property as well as exhibit A-6, the aerial view from the Monmouth County GIS and said the setbacks can be seen; the lot is a conforming one and the existing home has setbacks violations. She then referred to the Municipal Land Use Law that speaks of reducing non-conformities. The existing home is 1,436 square feet and the proposed home is 3,300 square feet; the front setback is more for the new home but it still extends into the front setback. She said the law says no C2 variance should be granted if it benefits the applicant only, it should benefit the community and the applicant has to demonstrate this action is better than what is required. This parcel is not unique, the existing structure obstructs the visual cohesiveness and the new home will be more and light, air and open space should be preserved; it needs to be set back 40 feet to allow this and the same can be said for the side yard. She referenced Sea Girt Ordinance 17-5.19 which talks about open space meeting the requirements and she did not hear testimony on this. There are other homes in this area with square footage of over 3,000 square feet but they stay within the setbacks and comply. The Master Plan Update of 2018 talks about large structures and the 2008 report spoke of oversized buildings, saying some construction is out of line with the character of Sea Girt and also spoke of yard encroachments. The 2018 Update said the town is to keep a pattern of a seaside community and keep streetscape establishments. She then cited Ordinance 17-8.8 saying it is unlawful to erect, etc. any building that goes above the standards. She ended by stating she did not believe the C2 standards had been met.

Mr. Ward then spoke and asked to take a poll if the meeting should continue on this evening, it was almost 10:00 p.m. Mrs. Laszlo wanted to go a little longer for the public to be heard.

Mr. Kennedy asked Mr. Aikins if he wanted to cross-examine or come back next month. Mr. Aikins said he has not spoken to Mr. Asadi and did not know he was bringing in an expert witness for a strong objector. This hearing has gone on for 3 hours straight and there are people who want to speak in favor of this application. There also was not a chance to discuss the air conditioning location which needs an answer. He asked that it be carried to the next available meeting and the Board members expressed their agreement to have this carried. Mr. Kennedy then made the announcement that this will be carried to the September 15<sup>th</sup> meeting, as the August

Wednesday, July 21, 2021

agenda is full, without further notice and Mr. Aikins gave his consent to waive the time frame for approval. Mr. Asadi was agreeable to all this as well.

A motion was then made by Mr. Ward, seconded by Councilwoman Anthony, to carry this hearing to Wednesday, September 15<sup>th</sup> at 7:00 p.m. without further notice; the Board voted in favor of this action, all aye, no nays.

Chairman Hall then came back on and thanked Mrs. Laszlo for doing an excellent job; Mrs. Laszlo wanted to say she joined the Planning Board years ago after being asked by Mayor Farrell and she wanted to thank him for his service, he will be missed, the Board all agreed with her. Chairman Hall added that this is a really nice mix of Board members and he complimented all for their work.

As there was no other business to come before the Board a motion to adjourn was made by Councilwoman Anthony, seconded by Mr. Koreyva and approved unanimously by the Board, all aye. The meeting was adjourned at 10:07 pm.

Approved: August 18, 2021

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Karen S. Brisben, Board Secretary

