

Wednesday, October 16, 2019

SEA GIRT PLANNING BOARD
WEDNESDAY, OCTOBER 16, 2019

The Regular Meeting of the Sea Girt Planning Board was held on Wednesday, October 16, 2019 at 7:00 p.m. at the Sea Girt Elementary School, Bell Place, Sea Girt. In compliance with the Open Public Meetings Act, notice of this Body's meeting had been sent to the official newspapers of the Board and the Borough Clerk, fixing the time and place of all hearings.

After a Salute to the Flag, roll call was taken:

Present: Karen Brisben, Jake Casey, Mayor Ken Farrell, Eileen Laszlo, Raymond Petronko, John Ward, Norman Hall

Absent: Carla Abrahamson, Larry Benson, Robert Walker
(Note: Matt Mastroilli had resigned from the Board)

Also present was Kevin Kennedy, Board Attorney; Board member and Secretary Karen Brisben recorded the Minutes. There was no one in the audience.

The Minutes of the September 18, 2019 meeting were approved on a motion by Mrs. Laszlo, seconded by Mayor Farrell and then by a voice vote, all aye.

OLD BUSINESS:

The first item on the agenda was the approval of a Resolution for upholding the Zoning Officer's decision regarding Block 8, Lot 12, appeal for 800 First Avenue pool installation.

Mr. Kennedy went over the points of the Resolution, reminding all the vote was done in three parts: 1) was the appeal filed timely, 2) vote on Zoning Officer's decision, 3) Perle application withdrawn without prejudice. He said the Resolution will have to be approved in three parts and it was then presented in this manner:

WHEREAS, Agents of Carolyn Monte and Agents of Adam and Jeanne Perle have submitted separate and independent Applications to the Sea Girt Planning Board, with respect to the property located at 800 First Avenue, Sea Girt, New Jersey (Block 8, Lot 12), within the Borough's District I, East Single-Family Zone, for the following forms of alternative relief:

- a) Carolyn Monte has filed an appeal of the Zoning Officer decision which authorized Adam / Jeanne

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Perle to install an in-ground pool on the 800 First Avenue, Sea Girt, NJ property; and

- b) In the event the subject Zoning Officer decision, as aforesaid, was reversed, Adam / Jeanne Perle have filed a Variance Application so as to receive Bulk Variance Approval to retroactively authorize the installation of an in-ground pool at the 800 First Avenue, Sea Girt, NJ property; and

PUBLIC HEARING

WHEREAS, the Board conducted a Public Hearing on both aspects of the alternative appeal / Application on September 18, 2019, with both Appellant and Applicants having filed proper Proof of Service and Publication in accordance with Statutory and Ordinance Requirements; and

EVIDENCE / EXHIBITS

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

- *Communication from Leon S. Avakian, Inc., to the Municipal Zoning Officer, dated April 16, 2019, introduced into Evidence as B-1;*
- *Leon S. Avakian, Inc. Review Memorandum, introduced into Evidence as B-2;*
- *Zoning Officer Approval Letter, dated May 1, 2019, introduced into Evidence as B-3;*
- *Communication from the Sea Girt Zoning Officer, to Adam / Jeanne Perle, dated May 30, 2019, introduced into Evidence as B-4;*
- *Leon S. Avakian Review Memorandum, dated March 21, 2019, introduced into Evidence as B-5;*
- *Land Development Application (Appeal), submitted on behalf of Carolyn Monte, undated, introduced into Evidence as Monte-1;*

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- *Communication from Ron Gasiorowski, Esq., to the Borough Attorney, dated May 31, 2019, introduced into Evidence as Monte-2;*
- *Communication from Ron Gasiorowski, Esq. to the Borough Attorney, dated May 29, 2019, introduced into Evidence as Monte-3;*
- *A package, prepared by Carolyn Monte, containing a Tax Map, a Resolution of the Sea Girt Planning Board from 1983 (Swerdlow property), a partial copy of the Klein Resolution from October 17, 2018, a Zoning Denial Letter with respect to the property located at 804 First Avenue, Sea Girt, NJ, communication from Leon S. Avakian, Inc., to the Zoning Officer, dated April 16, 2019, Zoning Approval Letter for the 800 First Avenue, Sea Girt, NJ site (pool), dated May 1, 2019 and communication from the Municipal Zoning Officer to Adam / Jeanne Perle, dated May 30, 2019, collectively introduced into Evidence as Monte-4;*
- *A picture of the Perle property, taken by Carolyn Monte, in or about August of 2019, introduced into Evidence as Monte-5;*
- *Notice of Appeal of Zoning Officer Decision, dated May 28, 2019, introduced into Evidence as Monte-6;*
- *Land Development Application Package, submitted on behalf of Adam / Jeanne Perle, dated on or about June 21, 2019, introduced into Evidence as Perle-1;*
- *Resolution of the Sea Girt Planning Board, regarding the subject 800 First Avenue, Sea Girt, NJ property, adopted on or about May 21, 2014, introduced into Evidence as Perle-2;*
- *A hard copy of a PowerPoint Presentation, which was reviewed, in public, during the Public Hearing Process, introduced into Evidence as Perle-3;*
- *A copy of a flyer allegedly distributed by Carolyn Monte (concerning the installation of the pool on the Perle property), undated, introduced into Evidence as Perle-4;*
- *Affidavit of Service; and*
- *Affidavit of Publication.*

WITNESSES

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WHEREAS, sworn testimony in support of the Carolyn Monte Appeal was presented by the following:

- Carolyn Monte, Appellant, appearing pro se;

WHEREAS, sworn testimony on behalf of Adam / Jeanne Perle was presented by the following:

- Justin Auciello, Professional Planner;
- John Jackson, Esq., appearing;

WHEREAS, sworn testimony on behalf of the Zoning Officer was presented by the following:

- Chris Willms, Zoning Officer; and

COMBINED APPEAL / APPLICATION HEARING

WHEREAS, for the extensive reasons placed on the record by the Board Attorney, with the consent of both the Appellant and the Applicants, and with the absence of any Board Objections, based upon the common testimony and witnesses involved, in order to maximize the overall Hearing efficiency, the 2 independently submitted requests were combined into 1 Hearing; and

TESTIMONY AND OTHER EVIDENCE PRESENTED ON BEHALF OF THE APPELLANT AND THE APPLICANTS

WHEREAS, testimony and other evidence presented on behalf of all of the witnesses revealed the following:

- Carolyn Monte (or an Agent thereof) is the Owner of the single-family home located at 810 First Avenue, Sea Girt, NJ.

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- Adam and Jeanne Perle (or Agents thereof) are the Owners of the single-family home located at 800 First Avenue, Sea Girt, NJ (Block 8, Lot 12).
- The Perle property is a very unique Lot. Specifically, the subject property fronts on 3 streets; namely, First Avenue, Trenton Boulevard, and Morven Terrace. The location and orientation of the subject lot, particularly in comparison to how the same interacts/interplays with other surrounding lots is quite unique.
- On or about April 16, 2014, Adam and Jeanne Perle received Bulk Variance Approval (from the Sea Girt Planning Board) to, among other things, construct a detached garage in a Front Yard area at the site.
- Specifically, the 2014 Bulk Variance Approval authorized Mr. and Mrs. Perle to construct a garage in a front yard area (i.e. the area of the Perle yard off of First Avenue.
- The aforesaid Planning Board Resolution of Conditional Approval was adopted on or about May 21, 2014.
- There was no known appeal of the said 2014 approval / decision.
- The Resolution of Conditional Approval from 2014, as aforesaid, was marked into Record (in the within Hearing) as Perle-2.
- Among other findings, the aforesaid Resolution of Conditional Approval contained the following Findings of Fact and Conclusions of Law:
 - *The subject property is a unique Lot. Specifically, the subject property fronts on 3 Streets; namely, First Avenue, Trenton Boulevard, and Morven Terrace.*
 - *Per prior determination of the Zoning Officer, First Avenue essentially constitutes the front yard area of the subject property.*
- In furtherance of the above, Mr. and Mrs. Perle arrange for the aforesaid detached garage to be constructed off of First Avenue, in the front yard area.
- Several years later, in or about 2019, Mr. and Mrs. Perle submitted a Zoning request to the Borough of Sea Girt Zoning Officer seeking administrative approval to install an in-ground pool on the subject property. Specifically, the proposed in-ground pool was to be located in the area of the Perle property off of Morven Terrace.

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- The Zoning Officer testified that when he reviewed the Perle Resolution of Conditional Approval from 2014 (Monte-2), and based upon the specific language of the same, the Zoning Officer classified the First Avenue area (of the Perle property) as a front yard area.
- In furtherance thereof, the Zoning Officer opined that the Morven Terrace area (of the Perle property), was a rear yard area and, as such, Mr. and Mrs. Perle were permitted to install an in-ground pool in the said rear yard area, without receiving / securing formal Variance relief.
- On or about May 1, 2019, the Zoning Officer administratively approved the Perle request to install an in-ground pool on the Perle property, off of Morven Terrace.
- Mr. and Mrs. Perle thereafter arranged to commence the pool construction / installation process.
- Mrs. Monte testified that she was not aware of the aforesaid administrative approval by the Zoning Officer. That is, Mrs. Monte testified that she was not aware that the Zoning Officer administratively approved the request of Mr. and Mrs. Perle to install a pool (on the Perle property) off of Morven Terrace.
- Mrs. Monte testified that she found out about the Perle Administrative Approval for the installation of the pool on or about May 10, 2019.
- Mrs. Monte furthermore testified that she was very upset and concerned when she learned about the administrative approval for the aforesaid installation of a pool on the Perle property – for she felt that the subject pool was located in a front yard area and, as such, formal Variance Approval should have been required for the same.
- Mrs. Monte furthermore testified that some other neighbors in the area were upset about the same situation as well.
- Mrs. Monte further testified that, on or about May 10, 2019, the Municipal Zoning Officer advised some of the other concerned neighbors that they would have twenty (20) days (from May 10, 2019) to appeal the said Zoning Officer Decision, if the neighbors were aggrieved by the same.
- Chris Willms, the Zoning Officer, essentially confirmed the fact that on or about May 10, 2019, he did, in fact, advise some other

complaining neighbors that they would have twenty (20) days (from May 10, 2019) to appeal the subject Zoning Officer decision.

- Though the Zoning Officer did not directly provide the said information to Mrs. Monte, Mrs. Monte did testify that the same information was nonetheless relayed (to Mrs. Monte) by the other neighbors.
- Mrs. Monte testified that she believed the twenty (20) day appeal period (running from May 10, 2019), as referenced by the Zoning Officer, as aforesaid, was applicable to her as well.
- Mrs. Monte further testified that she did not physically see any pool construction (on the Perle property) until sometime between May 20, 2019 and May 29, 2019.
- Mrs. Monte further testified that she also printed and distributed a flyer to neighbors in the community. (The purpose and intent of the said flyer was to attempt to ensure that neighboring residents understood the situation, and the flyer was also intended to generate opposition to the proposed Perle pool.)
- Mrs. Monte did not have a copy of the referenced flyer during the Public Hearing before the Board. (Upon information and belief, the Perle representatives had a copy of the same in their PowerPoint Presentation, which was marked into the Record as Perle-3).
- Mr. and Mrs. Perle arranged for the pool to be constructed on the Perle property, in the location which was administratively approved by the Zoning Officer. (Mrs. Monte testified that the pool was constructed / installed in a very expeditious fashion.)
- On or about May 28, 2019, Mrs. Monte, through her then Attorney, formally appealed the subject decision of the Zoning Officer (Monte-3). Specifically, Mrs. Monte, through her then Attorney, argued that the Zoning Officer should not have allowed Mr. and Mrs. Perle to install a pool in the area of the Perle property off of Morven Terrace - for the said area constituted a front yard area, and pools are not permitted in a front yard area. As such, Mrs. Monte claimed that in order for a pool to be located in the Morven Terrace portion of the Perle property, formal Variance Approval was required, and a formal Hearing was required before the Sea Girt Planning Board.
- Mr. and Mrs. Perle, through their Attorney, subsequently filed an Application seeking Variance relief to retroactively justify the installation of the in-ground pool, as aforesaid.

PUBLIC COMMENTS

WHEREAS, during the Public Hearing process, statements, questions, concerns, and / or objections were presented by the following:

- Tom Burkhardt
- Paul Henry

QUESTIONS PRESENTED ON APPEAL / APPLICATION

WHEREAS, as a result of the above, the 3 inherent questions on the combined Appeal / Application include the following:

- A. Was the Carolyn Monte Appeal of the subject Decision of the Zoning Officer filed in a timely fashion?
- B. Should the subject Zoning Officer Decision (administratively allowing Mr. and Mrs. Perle to install an in-ground pool on the Perle property, off of Morven Terrace) be affirmed or reversed?
- C. If necessary, should the Planning Board grant Mr. and Mrs. Perle Bulk Variance Relief to retroactively justify the aforesaid pool installation?

FINDINGS OF FACT

NOW, THEREFORE, BE IT RESOLVED, by the Sea Girt Planning Board, after having considered the aforementioned Applications, plans, evidence, and testimony, and arguments, that the Board hereby makes the following Findings of Facts:

GENERAL FINDINGS

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

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2. The property which is the subject of the within Appeal / Application, is owned by Mr. and Mrs. Perle (or Agents thereof), and the same is located at 800 First Avenue, Sea Girt, New Jersey (Block 8, Lot 12).

3. The subject property is located in the Borough's District 1, East Single-Family Zone.

4. The Perle property currently contains a single-family home, a detached garage, and an in-ground pool.

5. Single-family use, as exists on the Perle property, is a permitted use in the subject Zoning District as well.

6. The detached garage on the Perle property, is a permitted accessory use in the subject Zoning District.

7. Subject to the location questions / concerns, the In-ground Pool Use is a permitted accessory use in the Zoning District as well.

8. Mrs. Monte lives on the property adjacent to the Perle property. Specifically, Mrs. Monte lives at the property located at 810 First Avenue, Sea Girt, NJ. Per the testimony and evidence presented, Mrs. Monte has lived in Sea Girt for approximately 45 years, and she has lived in the subject 810 First Avenue property for approximately 38 years.

9. The most recent Appeal / Application concerns the Zoning Officer decision to administratively issue a Zoning Permit authorizing Mr. and Mrs. Perle to install an in-ground pool (on the Perle property), in the area of the Perle property located off of Morven Terrace. Specifically, Mrs. Monte believes that the Perle pool, located off of

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Morven Terrace, is improperly located in a front yard area and, that formal Variance Approval should have been applied for before any pool was so constructed.

10. The "Testimony" section of the within Resolution is incorporated herein at length, as the same more specifically recites the relevant factual information.

11. The within Appeal / Application, and / or alternative relief associated therewith, essentially involves the following 3 questions:

- A. *Was the Carolyn Monte Appeal of the subject Decision of the Zoning Officer filed in a timely fashion?*
- B. *Should the subject Zoning Officer Decision (administratively allowing Mr. and Mrs. Perle to install an in-ground pool on the Perle property, off of Morven Terrace) be affirmed or reversed?*
- C. *If necessary, should the Planning Board grant Mr. and Mrs. Perle Bulk Variance Relief to retroactively justify the aforesaid pool installation?*

12. The Sea Girt Planning Board is statutorily authorized to adjudicate the first 2 questions dealing with the Monte Appeal.

13. The Sea Girt Planning Board is also statutorily authorized to adjudicate the third question regarding the Perle request for Variance Relief.

14. The within situation / Appeal / Application represents a very, very unique set of facts – and the same involves Mrs. Monte, as Appellant, and Mr. and Mrs. Perle as Applicants.

15. Each party, as aforesaid, filed Appeal / Application documents, each party paid Application / Escrow Fees, and each party independently noticed for the requested relief.

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16. There was an extensive discussion as to whether the 2 elements of the related cases (i.e. the Zoning Appeal and the Variance Relief) should be presented simultaneously or independently.

17. There was a very extensive on-the-record discussion regarding the above-referenced procedural issues, and whether the two separate arguments should be presented simultaneously or independently.

18. After such an extensive discussion, with recognition that each element of the Appeal / Application would likely involve the same testimony, from the same witnesses, with the same factual / legal arguments, in the spirit of judicial efficiency, and so as to create a more organized and comprehensive record, the Board representatives were inclined to “combine” the various elements of the Monte Appeal and the Perle Application into 1 formal presentation / Hearing.

19. Neither Mrs. Monte, nor Mr. and Mrs. Perle, or Agents thereof, objected to the simultaneous presentation of the 2 independent cases.

20. Consequently, the Planning Board determined to combine / coordinate the 2 Hearings, into 1 overall presentation.

21. The coordinated / combined presentation of the cases, as aforesaid, constituted an efficient, streamlined, and productive method to dispose of the 2 independent but related cases.

22. Independent adjudication of the 2 related cases would not promote judicial efficiency.

23. Independent adjudication of the 2 related cases would not promote Board efficiency.

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24. The coordination/consolidation of the 2 separate cases into 1 presentation, as aforesaid, did not compromise the interests of Mrs. Monte (the Appellant), Mr. and Mrs. Perle (the Applicants), the Board, the Public, or the Borough of Sea Girt.

25. For ease of administration, the within Resolution will address each of the 3 issues presented on Appeal / Application.

Question A

Was the Carolyn Monte Appeal of the subject Decision of the Zoning Officer filed in a timely fashion?

With regard to the said issue, the Board finds the following:

- N.J.S.A. 40:55D-72 (a) authorizes a Municipal Land Use Board to “Hear and decide Appeals where it is alleged by the Appellant that there is an error in any Order, Requirement, Decision or Refusal made by an Administrative Officer, based on, or made in the enforcement of, the Zoning Ordinance.
- Essentially, per the controlling Statute, any such Appeal must be filed within twenty (20) days of the issuance of the subject Decision / Order of the Zoning Officer.
- Generally speaking, if an Appeal is not timely filed, the Board has no jurisdiction to process / adjudicate the Appeal.
- Typically, when an individual homeowner submits a Zoning Permit, and the same is denied, it is fairly easy and straightforward to determine when the twenty (20) day appeal period officially begins and officially ends.
- The timing situation, and timing sensitivities, become much more nuanced and problematic whereas, as here, a neighbor is objecting to a Zoning Officer Decision issued for an adjoining property owner. In such situations, there is no obligation for the Zoning Officer to notify any neighbors of the Zoning Officer Decision and, consequently, determining the beginning date and ending date of any potential appeal period can become problematic.

- The issue was recently discussed / clarified in a recent Decision of the New Jersey Supreme Court, in a case entitled Mary Harz vs. Borough of Spring Lake (A-48-16) (078711).
- Certain aspects of the said Harz Case are very relevant for purposes of the within case.
- The Harz Case, in pertinent part, provided the following:

“...to that end, N.J.S.A. 40:55D-72 (A) specifically provides that “Appeals to the (Land Use Board) may be taken by any interested party affected by any Decision of an Administrative Officer of the Municipality based on or made in the enforcement of the Zoning Ordinance.” (Emphasis in original). The MLUL (Municipal Land Use Law) broadly defines an “interested party” as “any person, whether residing within or without the Municipality, whose right to use, acquire, or enjoy property is or may be affected by any action taken under (the MLUL)” in an Administrative proceeding before a Municipal Agency. (Citations omitted). An interested party clearly includes a neighbor who is affected “by the grant of a Building Permit that will result in a structure (on an adjacent property) that violates the Zoning Ordinance.” Zoning and Land Use Administration Book, Section 26-1.1.

N.J.S.A. 40:55D-72 (A) also sets forth the timeframe and process for filing an Appeal to the (Land Use Board) and the obligation of the Administrative Officer to transmit the Appeal:

Such Appeal shall be taken within twenty (20) days by filing a Notice of Appeal with the Officer from whom the Appeal was taken specifying the grounds of such Appeal. The Officer from whom the Appeal is taken shall immediately transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

Section 72(A) does not specify the event that triggers the commencement of the twenty (20) day limitation. (Citations omitted). In the Case of an Applicant who receives direct notice of the denial of the Zoning

Permit, the Notice appears to be the obvious trigger. However, because no provision requires the Administrative Officer to notify a nearby property owner about the issuance of a Zoning Permit, the property owner may not know of the official action until well beyond the twenty (20) day limitation period. (Citations omitted). In that circumstance, Courts have taken the sensible position that “the time for appeal begins to run from the date an interested person knew or should have known of the Permit’s issuance.” (Citations omitted).

- Per the above-referenced provisions, it is abundantly clear that Mrs. Monte, an adjoining property owner, is an individual whose right to use, acquire, or enjoy her property is or may be affected by the action taken by the Zoning Officer.
- Per the above-referenced cited provisions, it is equally abundantly clear that an aggrieved individual has twenty (20) days to file an Appeal of the Zoning Officer Decision – and that the twenty (20) days commences when the Appellant knew, or should have known, about the issuance of the Permit.
- A recap of the relevant factual testimony and dates includes the following:
 - May 1, 2019: The date on which the Zoning Officer issued a Zoning Permit authorizing Mr. and Mrs. Perle to install an in-ground pool at the site;
 - May 10, 2019: The approximate date on which the Zoning Officer advised some concerned neighbors that they would have twenty (20) days (from May 10, 2019) to appeal the issuance of the Permit authorizing Mr. and Mrs. Perle to install the in-ground pool;
 - May 28, 2019: The date on which Mrs. Monte, through her Attorney formally appealed the decision of the Zoning Officer (which allowed Mr. and Mrs. Perle to install an in-ground pool on the site).
- Though some of the dates, as aforesaid, were not necessarily testified to with exact / specific precision, general

dates referenced appear to be generally confirmed / verified by the testimony presented by the Monte representatives, the testimony / arguments of the Perle representatives, the testimony from the Zoning Officer, and other documents submitted.

- As referenced above, based upon the testimony presented, it appears that on or about May 10, 2019, some neighbors of Mrs. Monte were advised (by the Zoning Officer) that the twenty (20) day timeframe for appealing the said Decision would begin on May 10, 2019.
- It appears quite clear (per the testimony presented), that even though the Zoning Officer did not directly provide the said message to Mrs. Monte, Mrs. Monte, in consultation with the neighbors who did receive the message, understood that she also had twenty (20) days to appeal the decision (from May 10, 2019).
- Per the testimony and evidence presented, it appears that Mrs. Monte was not familiar with the issuance of the Zoning Permit, or the associated pool construction, until on or about May 10, 2019.
- Based upon the testimony and evidence presented, the Board finds that the Monte Appeal, filed on May 28, 2019 (Monte-6) was filed within twenty (20) days of when Mrs. Monte knew, or should have known, about the issuance of the Zoning Permit / construction of the pool.
- Based upon the information presented, and as summarized herein, the Board finds that the appeal of Mrs. Monte was, in fact, timely filed.
- Based upon the testimony and evidence presented, under the circumstances, any other decision / determination would (regarding the timelines of the Monte appeal) be inequitable and unfair.
- Based upon the testimony and evidence presented, under the circumstances, the Board finds that any other decision / determination (regarding the timeliness of the Monte appeal) would be wrong.
- The Board is of the belief that, under the circumstances, any other decision / determination (relative to the timeliness of

the Monte appeal) would not be supported by the weight of evidence presented.

- Based upon the testimony and evidence presented, under the circumstances, the Board finds that any other decision / determination (relative to the timeliness of the Monte appeal) would wrongfully deny Mrs. Monte of her right to appeal the said decision.
- Based upon the testimony and evidence presented, under the circumstances, the Board finds that any other decision / determination (relative to the timeliness of the Monte appeal) would be overly technical.
- Based upon the testimony and evidence presented, under the circumstances, the Board finds that any other decision / determination (relative to the timeliness of the Monte appeal) would appear to contradict the general holdings of the aforesaid Harz decision (which suggests that Appellants should have twenty (20) days to appeal, and that the 20 day appeal period should commence when Appellants knew, or should have known, about the issuance of the Zoning Permit).

Mr. Casey made a Motion to hold that the Monte Appeal was timely filed, this seconded by Mr. Ward and then by the following roll call vote:

Ayes: Larry Benson, Karen Brisben, Jake Casey, Raymond Petronko, Robert Walker, John Ward, Norman Hall

Noes: Eileen Laszlo

Abstained: None

QUESTION B

Should the subject Decision of the Zoning Officer (administratively approving the installation of the in-ground pool) be affirmed or reversed?

With regard to the said issue, the Board finds the following:

- In having decided that the Monte Appeal was timely filed, as referenced above, the Board then adjudicated the issue concerning the substantive aspect of the Monte Appeal. Specifically, the Board Members reviewed the testimony /

evidence / arguments so as to ascertain if the subject decision of the Zoning Officer should be affirmed or reversed.

- As referenced, New Jersey Law specifically empowers a Municipal Land Use Board to review a timely Appeal of a Zoning Decision (or other determination) issued by the Zoning Officer.
- Parenthetically, the Board Members are aware that the affirmation of the decision of the Zoning Officer is not a statement as to the overall efforts / abilities of the Zoning Officer. Likewise, the Board Members are also aware that any potential reversal of the Zoning Officer decision is not to be construed as a negative statement as to the overall abilities of the Zoning Officer. Rather, the Board Members are aware that the decision of the Zoning Officer can be affirmed or reversed, without compromising the integrity / reputation of the Zoning Officer.
- At the outset, the Board notes, and appreciates, the fact that the within Appeal / Application represents a source of tension between neighbors.
- The Board recognizes, and appreciates, the thoughtful, persuasive, intelligent, and insightful arguments presented by the Monte representatives, the Perle representatives, and the representations of the public. The Board Members reviewed and considered all issues / points / arguments presented.
- Though the situation has apparently caused tension between neighbors, the Board is, nonetheless, obligated and required to adjudicate the within Appeal in accordance with Prevailing Legal Standards.
- Per his testimony, the Zoning Officer testified that he relied, quite extensively, on the Findings of Fact and Conclusions of Law as set forth in the Planning Board's 2014 Resolution of Conditional Approval (associated with the prior Perle request to install a garage at the site) (Perle-2)
- As such, an in-depth review of the aforesaid Resolution of Conditional Approval is not only necessary, but appropriate.
- The said Resolution, from 2014, in pertinent part, provides the following:

**TESTIMONY AND OTHER EVIDENCE PRESENTED
ON BEHALF OF THE APPLICANT (2014)**

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

- *The Applicants are the Owners of the subject property.*
- *The Applicants have owned the subject property for approximately 2 years.*
- *A single-family home previously existed at the site.*
- *The previously existing single-family home at the site was demolished.*
- *The Applicants obtained appropriate permits for a new single-family home to be constructed at the site.*
- *The home is in the process of being constructed, and is nearly 95% complete.*
- *It is anticipated that in approximately 2 years, the newly constructed home will be the primary residence for the Applicants.*
- *Per Prevailing Municipal Regulations, the single-family home is required to have a garage.*
- *The Applicants had obtained permits for a garage to be located on the portion of the property near Morven Terrace. (The said location for the garage complied with all Prevailing Municipal Requirements, and no Variance was required for such a placement.)*

- *Thereafter, various neighbors approached the Applicants and inquired about the possibility of the Applicants changing the location of the garage. Specifically, some of the neighbors asked the Applicants to place the garage on the portion of the property near First Avenue. (Some of the neighbors were of the collective opinion that a relocated garage, on the First Avenue portion of the property, would be safer, more aesthetically pleasing, and more capable of preserving the views of others.)*
- *Because the subject property is surrounded by 3 streets, because the Municipal Zoning Officer previously designated First Avenue as the front yard area, placement of the garage (on the First Avenue portion of the property) (as requested by some of the neighbors) would necessitate Variance Approval.*
- *Though the Applicants' initially approved Plans did not require approval for any Variance, in the spirit of promoting neighborly relations, the Applicants were willing to assume the cost, risk, stress, and time delays of obtaining Variance approval to construct a non-compliant garage, as aforesaid.*
- *In furtherance thereof, the Applicants arranged for a Variance Application, Plans, and fees to be submitted to the Borough of Sea Girt.*
- *As part of the Land Use approval process, the Application and Plans were forwarded to numerous agents of the Borough, including the Board Engineer.*
- *The Board Engineer's Review Memorandum indicated that notwithstanding the fact that Construction / Zoning Permits were previously issued, the*

home, in the process of being built, required a Side Yard Setback Variance.

- *The Applicants were not aware that any such Variance was necessary – particularly in that Construction and Zoning Permits were previously issued, and particularly in that the home was already approximately 95% constructed.*
- *The Applicants and their representatives did not necessarily agree that a Side Yard Setback Variance was necessary for the single-family home – but the Applicants were nonetheless interested in resolving the matter.*
- *The home, is nearly 95% complete.*
- *Details pertaining to the proposed garage include the following:*

<i>Type of Garage:</i>	<i>Detached garage</i>
<i>Number of Bays:</i>	<i>2</i>
<i>Size:</i>	<i>484 SF</i>
<i>Height:</i>	<i>15.75 ft.</i>
<i>Number of Stories:</i>	<i>1</i>
<i>Use:</i>	<i>Garage and storage only</i>
<i>Materials:</i>	<i>Frame</i>
<i>Location:</i>	<i>Off of First Avenue</i>
<i>Curb cut details:</i>	<i>Code-compliant</i>

- *The Applicants would like to have the garage constructed as quickly as possible (as construction of the garage will need to be completed before a Certificate of Occupancy for the home can be issued.)*
- *The Applicants will be using licensed contractors in connection with the construction of the garage.*

VARIANCES (2014)

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

Variances:

LOCATION FOR AN ACCESSORY STRUCTURE:

The Prevailing Municipal Regulations provide that no accessory structure (including a free-standing garage) shall be placed in the front yard area of any Lot – whereas, in the within situation, the Applicants are is proposing a free-standing garage in a technical front-yard area.

FINDINGS OF FACT (2014)

- ... The subject property is a unique Lot. Specifically, the subject property fronts on 3 streets; namely, First Avenue, Trenton Boulevard, and Morven Terrace.
- Per a prior determination of the Zoning Officer, First Avenue essentially constitutes the front yard area of the subject property.
- It is believed that there are only approximately 3 or 4 other similarly geographically configured properties within the Borough.
- The unique Lot, and the geographical limitations / constrictions associated therewith, clearly restrict the nature / lay-out / orientation of any proposed garage at the site.
- Under the circumstances, the unique Lot (and geographical constrictions / limitations associated therewith) constitutes a hardship.
- The unique Lot (and geographical constrictions / limitations associated therewith) materially limit the ability of the Applicant to satisfy all Prevailing Bulk Standards (for the placement of a

garage) in a functional and pleasing fashion.

- *Single-family use, as proposed / approved / legitimized herein is a permitted use in the subject Zone.*
- *The proposed garage is a permitted accessory use at the site.*
- *The location of the proposed home and garage are practical and appropriate – particularly in the light of the many limitations associated with the existing Lot.*
- *The size of the already constructed home and the proposed garage are appropriate, particularly given the size of the existing Lot.*
- *The existing Lot contains 10,200 SF, significantly in excess of the minimum 7,500 SF otherwise required in the Zone.*
- *The Board notes and appreciates that the Applicants consulted with the neighbors as to the most acceptable and preferred location for the garage, given the unique Lot and the geographical limitations associated with the subject property and its 3 frontages.*
- *The Board furthermore notes and appreciates that the Applicants were willing to absorb the time, cost, expense, stress, risk, and aggravation of a Variance Application – as opposed to placing the garage in a Variance-free / conforming location.*
- *The Board notes it would be easier, less expensive, and less stressful to keep the garage on the Morven Terrace portion of the property as initially permitted / approved – and that the Applicants are requesting a Variance so*

as to accommodate the wishes / desires of others in the neighborhood.

- *Relocating the garage to the First Avenue portion of the property, as proposed, will address the safety concerns, aesthetic concerns, and functional concerns of some of the neighbors.*
- *The ability to address reasonable development concerns of adjoining property owners, when possible and feasible, represents a legitimate development goal.*
- *The ability to address reasonable development concerns of adjoining property owners, when possible and feasible, promotes neighborly relations.*
- *Notwithstanding the good faith and neighborly preferences, the garage as proposed herein (off of First Avenue) does represent a better zoning alternative for the Borough of Sea Girt and the neighborhood.*
- *Per the testimony and evidence presented, there are approximately 6 other driveways on First Avenue in the immediate area – and thus, approval of the within Application will not be inconsistent with other development within the neighborhood.*
- *Per the testimony and evidence presented, of the approximate 26 homes in the First Avenue area, approximately 16 of the same have garages off of First Avenue. Thus, approval of the within garage location will not be out of character for the neighborhood.*
- *The location of the garage as proposed herein is consistent with the character of the neighborhood.*

- *The location of the garage, as proposed herein, is consistent with the pattern of development in the neighborhood.*
- *There were no public objections associated with the subject Application – and, in fact, several neighbors attended the Public Hearing and formally encouraged approval of the Application.*
- *The Board appreciates the good faith cooperation between the Applicants and their neighbors.*
- *Though the Board appreciates the cooperation between the Applicants and the neighboring property owners, the Board is nonetheless cognizant that the same is not the only controlling legal standard / factor in connection with a Variance Application. However, in addition to the cooperation between the Applicants and the neighboring property owners, the Board also finds that the within proposal (for a garage which is in a non-conforming location) represents a better zoning alternative for the subject property, the neighborhood, and the community as a whole.*
- *The home / garage approved herein will not overpower / overwhelm the subject Lot.*
- *The home / garage approved herein will not overpower / dwarf other homes in the area – particularly in light of the nature of the surrounding uses.*
- *The size of the proposed home is appropriate – particularly as evidenced by the fact that the same will satisfy the Borough's Prevailing Height Requirements, as well as the Borough's Prevailing Building Coverage Requirements.*

- *The size of the proposed garage is appropriate – particularly as evidenced by the fact that the same will satisfy the Borough's Prevailing Height Requirements, Prevailing Size Requirements, as well as the Borough's Prevailing Building Coverage Requirements, etc.*
- *The home and garage approved herein represent an attractive and upscale proposal, in accordance with Prevailing Community Standards.*
- *The site will provide a sufficient amount of off-street parking spaces for the Applicants' use and thus, no Parking Variance is required.*
- *The existence of sufficient and appropriate parking is of material importance to the Board – and but for the same, the within Application may not have been approved.*
- *The Board furthermore notes that but for the Applicants' desire to accommodate the wishes / desires of some of the neighbors (relative to the garage location), the Applicants would not need a Garage Variance.*
- *The Board furthermore notes that but for the Variance Application (relative to the garage location), the issue of the Side Yard Setback deficiency for the home (which is 95% complete) might not have been discovered.*
- *There was some legitimate and good faith confusion with respect to the property, the 3 street frontages, the designation of the front yard area for the same, and the permitted Side Yard Setback for the home.*

- *Per the testimony and evidence presented, the Applicants received all necessary permits / approvals for the single-family home, which is in the process of being constructed, and which, at the time of the Public Hearing, was nearly 95% complete.*
- *Per the testimony and evidence presented, there was no bad faith on the part of the Applicants and / or their contractors in connection with the construction of the single-family home, as aforesaid.*
- *Per the testimony and evidence presented, there was no fraud on the part of the Applicants and / or their contractors in connection with the construction of the single-family home, as aforesaid.*
- *Per the testimony and evidence presented, there was no deception on the part of the Applicants and / or their contractors in connection with the construction of the single-family home, as aforesaid.*
- *There are no known adverse health / safety issues associated with the placement of the home or garage.*
- *Approval of the within Application does not compromise the public health, safety, or welfare.*
- *Per the testimony and evidence presented, the Applicants and the Borough Officials acted in good faith with respect to the construction of a single-family home at the site, and the apparent non-conforming Side Yard Setback.*
- *During the Public Hearing process, there was a good faith debate as to how*

and whether the Side Yard Setback issue (associated with the home) should be addressed. Given the circumstances, given the good faith actions involved, given the Applicants' timing concerns, given the facts of the matter, given the zoning considerations, and given the legal / equitable issues involved, the Board Members were of the unanimous opinion that both issues (garage location and Side Yard Setback for the home) should be decided simultaneously and expeditiously.

- *The Board is aware that there are certain equitable and legal principles at play (such as Detrimental Reliance, Estoppel, etc.) which could impact how a reviewing Court would / could adjudicate the matter if litigation ensued.*
 - *The Board finds that the particular facts and circumstances associated with the within Application / site are so unique that the within Application / Resolution should not be construed as a precedent or basis for any other approvals or requests for Variances. Rather, as is the standard espoused in New Jersey Municipal Land Use Law, each Zoning Application will need to succeed or fail based upon its own merits / circumstances.*
- Based upon the above, the Zoning Officer testified, essentially, as to the following:
 - a. That the Perle garage, which was previously constructed, off of First Avenue, is, in fact, located in a front yard area.
 - b. That each Sea Girt corner property (including the Perle property), essentially has a front yard, a rear yard, and a side yard.

- c. That the designation of the Perle garage (i.e. located off of First Avenue) being in a front yard area means, by extension/implication, that the Morven Terrace area of the Perle property is, essentially, a rear yard area.
- d. Mr. and Mrs. Perle submitted a Zoning request to install an in-ground pool in the area of the Perle property off of Morven Terrace.
- e. Given the unique nature of the subject property, and given the specific Findings of the Board's 2014 approval classifying the First Avenue area of the Perle property (where the garage is located) as a front yard area, the Morven Terrace portion of the Perle property (where the pool is located) is, in fact, a rear yard area.
- f. That an in-ground pool is a permitted accessory use in a rear yard area.

For the foregoing reasons, the Zoning Officer administratively approved the Perle request to place an in-ground pool in the Morven Terrace area of the Perle property (which, per the Zoning Officer, is a rear yard area).

- Among other things, Mrs. Monte essentially argues that representatives of prior Borough Administrations agreed with her interpretation; namely, that the Morven Terrace area of the Perle property (where the pool is located) is, in fact, a front yard area. However, the Board notes that the Zoning Officer maintains that the Board's 2014 Resolution of Approval specifically identifies the First Avenue portion of the Perle property as the front yard area and, by extension, implies that the Morven Terrace portion of the Perle property is a rear yard area. Under the circumstances, the Zoning Officer was correct in relying upon the specific findings in the Board's 2014 Approval.
- Among other things, Mrs. Monte maintains that the First Avenue portion of the Perle property (i.e. where the garage is located) is a front yard area, but not the only front yard area. However, the Zoning Officer testified that a corner property (such as the Perle property) has to have a front

yard area, a rear yard area, and a side yard area. Once the Board's 2014 Approval designated the First Avenue portion of the Perle property as a front yard area, it was relatively simple to identify the corresponding rear yard area.

- Among other things, Mrs. Monte essentially argues that any one or any governing body representative who created or otherwise participated in the creation of the controlling Ordinance must have been "crazy." While the Board can appreciate the Appellant's frustration, in reality, the Board finds that the subject property is just so unique, and so special, that typical / standard Zoning Ordinances just do not have a lot of applicability to the isolated circumstances present herein.
- Among other things, Mrs. Monte maintains that the Perle property (where the pool is located) is, in fact, in a non-permitted front yard area, and, given the proximity of the Perle / Monte properties, Mrs. Monte will be forced to view the referenced improvement on the Perle property. Unfortunately, the Board notes that the geographical realities of the Perle property (i.e. a property surrounded by 3 streets and the Monte property require a unique and ever present interplay / interconnection between the 2 subject adjacent properties.
- The Board notes, respectfully, that there does not appear to be a direct or compromised view suffered by Mrs. Monte as a result of the pool installation.
- The Board also notes that extensive landscaping which exists on the Perle property will also minimize any visual intrusion.
- The Board also notes that given the nature/location of the Perle lot and the Monte lot, and the orientation of the single-family homes located thereon, Mrs. Monte does not appear to have a direct view of the Perle pool, a fact which should promote the privacy interests of all involved.
- The Board also notes that the Perle pool is surrounded by extensive landscaping, thereby minimizing the overall visual impact that the Perle pool will have on the Monte property.
- Among other things, Mrs. Monte argues that Mr. and Mrs. Perle are not year-round residents and, as such, Mr. and Mrs. Perle will not be in a position to maintain the pool. As

such, Mrs. Monte argues that it will, in fact, be Mrs. Monte who is required to clean / maintain the neighbor's pool. Respectfully, there was no evidence presented to suggest that Mr. and Mrs. Perle will not maintain the Perle pool. Additionally, even if such evidence were presented, the same is not a basis on which to overturn, or otherwise reverse, the decision of the Municipal Zoning Officer.

- The Board also notes that in the event Mr. and Mrs. Perle were to materially ignore ownership responsibilities with the Perle pool (or any other aspect of the Perle property), then, in that event, the Borough could avail itself to various Code Enforcement / Property Maintenance remedies / violations.
- Among other things, Mrs. Monte maintains that Mr. and Mrs. Perle had the in-ground pool constructed with break-neck speed, for the sole purpose of obviating, or otherwise minimizing, the success of any Monte Appeal.
- No evidence was presented to suggest that the Perle pool was constructed any quicker or slower than any other pool.
- Respectfully, the speed with which the pool was constructed could have resulted from a number of unrelated circumstances – including, but not limited to, contractor availability, payment incentives, scheduling issues, etc.
- Notwithstanding the above, and in respect to the argument of Mrs. Monte in the said regard, the Board notes that, as the controversy unfolded, Agents of the Borough / Board immediately sent Mr. and Mrs. Perle communications regarding the filing of the Monte Appeal. In furtherance thereof, both the Zoning Officer, and the Planning Board Attorney, in writing, advised Perle representatives that given that the Appeal had been filed, Mr. and Mrs. Perle should consider halting/staying any pool construction – for any work performed was, under the circumstances, performed at the risk of Mr. and Mrs. Perle. (See Exhibit B-4.)
- For the reasons set forth above, the Board finds that the speed with which the Perle pool was, or was not, installed is not relevant to the overall substantive merits of the within Appeal.
- The Board notes that the subject property is so very unique, given the natural location/orientation/interplay of the subject lots, the 3 public roads, and the other surrounding lots.

- The Board also notes that the extraordinarily unique aspect of the property was prominently referenced and highlighted in the Board's 2014 Resolution of Conditional Approval.
- The extraordinarily unique property, and orientation of the same (i.e. with frontages on 3 public roads defies practical / typical norms in terms of identifying a traditional front yard area, a traditional rear yard area, and / or a traditional side yard area).
- The extraordinarily unique aspects of the subject property, which is surrounded by 3 public roads, creates, or otherwise results, in a challenging exercise to determine the traditional front yard area on the site, the traditional rear yard area on the site, and / or the traditional side yard area on the site.
- Respectfully, the subject property is so unique that a traditional Zoning Ordinance would not be expected to adequately address typical issues otherwise associated with the so-called square or rectangular lots fronting on only one road.
- The challenging, extraordinary, and unique situation concerning the Perle property was the subject of many Findings of Fact and Conclusions of Law, as referenced in the Board's 2014 Resolution of Conditional Approval.
- The Board's Findings associated with the 2014 Perle Application constituted a legitimate and controlling resource guide for the Zoning Officer.
- The Board's Finding associated with the 2014 Perle Application constituted a legitimate basis for which the Zoning Officer issued his 2019 decision.
- Based upon the testimony and evidence presented, based upon the information contained in the 2014 Resolution of Conditional Approval, under the circumstances, the Zoning Officer appropriately recognized and considered the extraordinary circumstances associated with the Perle property (in rendering his 2019 decision).
- Per the Board's 2014 approval, the First Avenue portion of the Perle property is a front yard area and, by direct implication, the Morven Terrace portion of the Perle property is a rear yard area.

- In reviewing the Perle request for a pool, the Zoning Officer correctly ruled that, per the 2014 approval, the Morven Terrace portion of the Perle property (where the pool is located) is, in fact, a rear yard area.
- While prior Planning Boards, or prior Administrations may have had different opinions, beliefs, or interpretations on how various front yard, rear yard, and side yard areas are to be interpreted/located, in the within situation, the Zoning Officer had, at his disposal, a specific Resolution specifically declaring a specific portion of the Perle property as a front yard area and, by extension, a specific rear yard area.
- The Board also recognizes that, as referenced in the 2014 Resolution, Mr. and Mrs. Perle initially proposed to place the garage in a conforming (i.e. Variance-free) location. However, at the request of some of the neighbors, Mr. and Mrs. Perle decided to prosecute a 2014 Variance Application so that Mr. and Mrs. Perle could secure Variance Approval to place the garage in a non-compliant front yard area. That is, as referenced in the 2014 Resolution of Conditional Approval, in 2014, at the request of some neighbors, and so as to promote neighborly relations, Mr. and Mrs. Perle absorbed the time, cost, risk, and expense of a Variance Application so that the proposed garage could be located in a non-compliant location (to satisfy the wishes of some neighboring residents). As referenced in the 2014 approval, the Board appreciates the willingness of Mr. and Mrs. Perle to work with the neighbors.
- Some Board Members expressed concern that, under the circumstances, it would have been more appropriate for the Zoning Officer to defer the matter to the Planning Board, for further and Public review / discussion / analysis / interpretation. While some Board Members can appreciate the general concept of such cautionary advice, a majority of the Board is aware that the 2014 Application specifically identifies the front yard and rear yard areas of the Perle property and, under the circumstances, it was appropriate for the Zoning Officer to rely on the same (in his issuance of the subject Zoning Determination).
- The Board recognizes that the extraordinarily unique nature of the property, and the fact that only three or four other properties in the town are so situated, as referenced in the Board's 2014 approval, the prevailing circumstances will

likely prevent any negative / troubling precedent arising from the within decision.

- Based upon the testimony and evidence presented, there has been no known compelling changes regarding the Perle Property regarding the nature / topography / orientation of the Perle Property, which would require a reversal or reconsideration of the Board's 2014 determination (and the associated zoning officer decision herein).
- The Board appreciates the persuasive professional testimony/arguments which were presented by the Perle representatives in connection with the within appeal.
- Based upon the information presented, and for the reasons set forth herein and during the public hearing process, under the circumstances, the Land Use Board hereby **affirms** the decision of the Municipal Zoning Officer (wherein the Zoning Officer administratively authorized the installation of the Perle Pool.)
- Under the circumstances, sufficient evidence was not presented which would justify a reversal of the subject decision of the Zoning Officer.
- Under the circumstances, and based upon the testimony and evidence presented, it would not be appropriate to reverse the subject decision of the Zoning Officer.
- Under the circumstances, and based upon the information and evidence presented, the majority of the Board finds that it would be illogical to do anything other than affirm the subject decision of the Zoning Officer.
- Under the circumstances, and based upon the information presented, there is no sound basis to reverse the subject decision of the Zoning Officer.
- Under the circumstances, and based upon the testimony and evidence presented, there was no compelling lay testimony presented which would justify a reversal of the subject decision of the Zoning Officer.
- Based upon the testimony and evidence presented, under the circumstances, there was no compelling professional testimony presented which would justify a reversal of the decision of the Zoning Officer.

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Mrs. Laszlo made a Motion to affirm the subject decision of the Zoning Officer, this seconded by Mr. Walker and then by the following roll call vote:

Ayes: Larry Benson, Karen Brisben, Eileen Laszlo, Raymond Petronko, Robert Walker, Norman Hall

Noes: Jake Casey, John Ward

Abstained: None

QUESTION C

Should the Board grant Bulk Variance Relief so as to retroactively allow Mr. and Mrs. Perle to install an in-ground pool at the site?

With regard to the said question, the Board finds the following:

- As previously referenced, Mr. and Mrs. Perle submitted an Application for, and publicly noticed for, alternative relief so as to allow potential Bulk Variance Relief to retroactively legitimize the pool installation (which was previously administratively approved by the Zoning Officer.)
- The Application for the requested Bulk Variance was, essentially, deemed complete.
- In that the Board herein has affirmed the decision of the Zoning Officer, there is no need, and, in fact, there is no jurisdiction for, the Board to even consider the granting of the requested Bulk Variance relief. That is, there are no known Variances to grant. In the absence of a Variance request, the Board would have no jurisdiction to grant any Variance relief.
- In light of the said situation, it is necessary and appropriate for the Board to dismiss the Perle Bulk Variance Application, without prejudice.
- If the Board were not to dismiss the Perle bulk variance application, as aforesaid, without prejudice, there could, under certain circumstances, be a legislatively-mandated automatic approval of the Application.
- Any automatic approval of any Application would be anathema to conscientious formal Board review and adjudication.

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- Any automatic approval would not advance the interests of the Sea Girt Planning Board, the Borough of Sea Girt, or the residents of the Sea Girt community.
- The dismissal of the subject Perle Bulk Variance Application, without prejudice, will allow the Borough / Board to appropriately close its file and return any unused escrow, etc.
- The representatives of Mr. and Mrs. Perle consented to the aforesaid dismissal of the Bulk Variance Application, without prejudice.
- The dismissal of the aforesaid Perle Bulk Variance Application, without prejudice, is conditioned upon Mr. and Mrs. Perle satisfying any outstanding escrow charges, and other municipal charges.

Mr. Petronko made a Motion to dismiss the Perle Bulk Variance Application, without prejudice., seconded by Mr. Casey and then by the following roll call vote:

Ayes: Larry Benson, Karen Brisben, Jake Casey, Eileen Laszlo, Raymond Petronko, John Ward, Norman Hall

Noes: None

Abstained: None

The following votes to memorialize the above Resolution on October 26, 2019 were as follows:

1) Resolution vote on item #1, appeal was filed in a timely manner –

Motion by Mrs. Brisben, seconded by Mr. Casey followed by roll call vote:

Ayes: Karen Brisben, Jake Casey, Raymond Petronko, John Ward, Norman Hall

Noes: None

Abstained: None

Not Eligible to Vote: Mayor Ken Farrell, Eileen Laszlo

Absent: Carla Abrahamson, Larry Benson, Robert Walker

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2) Resolution vote on item #2, approval of Zoning Officer's Determination –

Motion by Mr. Petronko, seconded by Mrs. Brisben followed by roll call vote:

Ayes: Karen Brisben, Eileen Laszlo, Raymond Petronko, Norman Hall

Noes: None

Abstained: None

Not Eligible to Vote: Mayor Ken Farrell, Jake Casey, John Ward

Absent: Carla Abrahamson, Larry Benson, Robert Walker

3) Resolution vote on item #3, dismiss, without Prejudice, application for variance relief for pool at 800 First Avenue, owned by Adam & Jeanne Perle –

Motion by Mrs. Laszlo, seconded by Mr. Casey followed by roll call vote:

Ayes: Karen Brisben, Jake Casey, Eileen Laszlo, Raymond Petronko, John Ward, Norman Hall

Noes: None

Abstained: None

Not Eligible to Vote: Mayor Ken Farrell

Absent: Carla Abrahamson, Larry Benson, Robert Walker

The next item on the agenda was approval for Use Variance relief for Block 18, Lot 18, 5 First Avenue, owned by Michael O'Neill Revocable Trust, new home construction.

All Board members, as well as the applicant's attorney, had received a draft copy and there was a brief discussion on some points in the draft Resolution; some minor changes were made and the following was then presented for approval:

WHEREAS, representatives of the Michael O'Neill Revocable Trust have made Application to the Sea Girt Planning Board for the property designated as Block 18, Lot 18, commonly known as 5 First Avenue, Sea Girt, New Jersey, within the Borough's District 1, East Single-Family Zone, for the following approval: Use / "d" Variance

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approval and Bulk Variance approval associated with a request to effectuate the following:

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

PUBLIC HEARING

WHEREAS, the Board held a Public Hearing on September 18, 2019, Applicant's representatives having filed proper Proof of Service and Publication in accordance with Statutory and Ordinance Requirements; and

EVIDENCE / EXHIBITS

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

- *Zoning Application Package, introduced into Evidence as A-1;*
- *Grading Plan, prepared by R.C. Associates Consulting, Inc., dated January 10, 2019, last revised August 28, 2019, introduced into Evidence as A-2;*
- *Architectural Plans, prepared by Rice & Brown Architects, dated January 7, 2019, consisting of 5 sheets, introduced into Evidence as A-3;*
- *Pool Details, prepared by Ascent Consulting Engineering, dated March 9, 2019, introduced into Evidence as A-4;*
- *Survey, prepared by Charles O'Malley, PLS, dated August 15, 2017, signed August 8, 2019, introduced into Evidence as A-5;*
- *Leon S. Avakian Inc., Review Memorandum, dated July 30, 2019, revised September 11, 2019, introduced into Evidence as A-6;*
- *Poster Board containing six photographs of the subject property, obtained from google maps, introduced into evidence as A-7;*

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- *An illustrated rendering of the northeast corner of the property, prepared by Christopher Rice, Architect, introduced into Evidence as A-8;*
- *Communication from the Monmouth County Planning Board, dated May 16, 2109, introduced into Evidence as A-9;*
- *Affidavit of Service; and*
- *Affidavit of Publication.*

WITNESSES

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

- Michael O'Neill, Trustee of the Michael O'Neill Revocable Trust;
- Christopher Rice, Architect
- Ray Carpenter, P.E. / P.P.;
- Lynn B. Kegelman, Esq., appearing

TESTIMONY AND OTHER EVIDENCE PRESENTED ON BEHALF OF THE APPLICANT'S REPRESENTATIVES

WHEREAS, testimony and other evidence presented on behalf of the Applicant's representatives revealed the following:

- The Applicant herein is the Owner of the subject property.
- The Applicant has owned the subject property for approximately one year.
- There is an existing single-family home located at the site.
- The existing single-family home is not currently occupied.
- The existing home was not necessarily built for the needs of a modern family.
- The property has a very unique topography. Specifically, the existing driveway contains a significantly sunken driveway, which is

relatively level with the street. Moreover, the existing sunken driveway is surrounded by a retaining wall.

- The existing sunken driveway situation has, upon information and belief, contributed to, or otherwise exacerbated, certain grading / drainage issues in the area.
- The Applicant's representatives propose the following:
 - Demolition of an existing single-family structure; and
 - Construction of a new single-family structure, with detached garage, cabana, swimming pool, deck, and driveway.
- The new home approved herein will include the following:

BASEMENT

Recreation Room
Craft Room
Bedroom
Bathroom
Mechanical / Utility Room

FIRST FLOOR

Den
Bathroom
Foyer
Bathroom
Mud Room
Bedroom
Bedroom
Bedroom
Deck

SECOND FLOOR

Study / Flex Room
Family Room
Kitchen
Laundry Room
Bathroom

Pantry
Butler's Pantry
Covered Balcony

ATTIC

Master Bedroom
Master Bathroom
Den

- Details pertaining to the proposed swimming pool include the following:

Location	Northeast portion of property, behind the home, per the plans
Size	12 feet x 22 feet
Pool Depth	6 feet
Coping Details	The coping will be 12 inches wide

- Details pertaining to the proposed cabana include the following:

Location	Adjacent to the existing garage, in the rear of the property, per plans
Size	Approximately 14 feet x 8.5 feet

VARIANCES

WHEREAS, the Application as submitted, requires approval for the following

Variances:

POTENTIAL VARIANCE FOR WINDOW WELLS: Per the Prevailing Zoning Ordinance, no window well may be installed in an area designated as a required Setback; whereas, the window wells on the north side of the dwelling may encroach into the Side Yard Setback and thus, a potential Variance is necessary;

HEIGHT OF A PRINCIPAL STRUCTURE: Maximum 35 ft. allowed; whereas 39.5 ft. proposed;

GARAGE HEIGHT: Maximum 16 ft. allowed; whereas 19 ft. proposed;

SWIMMING POOL ELEVATION: The Prevailing Zoning Ordinance provides that no pool shall be constructed at an elevation greater than 12" higher than the unaltered existing ground elevation. The Applicant herein is proposing a coping elevation of 16.25 ft., which is greater than 12" higher than the unaltered existing ground elevation of 12.87 ft. i.e. a difference of 3 ½ ft. As such, Variance relief is required.

PUBLIC COMMENTS

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

- Robert Fabricant

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 with conditions**.

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

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

27. The subject property is located at 5 First Avenue, Sea Girt, New Jersey, within the Borough's District 1, East Single-Family Zone.

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

- The Applicant herein proposes the following:
 - Demolition of an existing single-family structure; and

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- Construction of a new single-family structure, with detached garage, cabana, swimming pool, deck, and driveway.

29. Such a proposal requires Use / “d” Height Variance Approval and Bulk Variance Approval.

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

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

- The subject site can physically accommodate the renovations approved herein.
- The Application as presented requires a Height Variance for the principal structure and a Height Variance for the garage.
- Specifically, the prevailing Zoning Ordinance allows a principal structure to have a height of 35 ft.; whereas 39.5 ft. is proposed herein.
- Likewise, under the prevailing Zoning Regulations, a free-standing garage is permitted be no taller than 16 ft.; whereas the Applicant herein is proposing a garage height of 19 ft.
- The Board is aware that with regard to the principal structure, a Height Variance can be either a Bulk “c” Variance or a Use/“d” Variance, depending upon the nature / extent of the height deviation.
- In conjunction with the above point, the Board notes that the height deviation proposed herein (for the principal structure) constitutes a “d” Variance, requiring Use / Bulk “d” relief.
- The Sea Girt Planning Board Members critically analyzed the height of the proposed principal and accessory structures.
- The Board is aware that the Borough of Sea Girt previously modified how building height is technically calculated.

- The Board Members are furthermore aware that with the prevailing / current building height calculation method, it is more difficult for new structures on elevated lots to comply with the Prevailing Height Regulations.
- The Applicant's lot herein is, in fact, elevated.
- The elevated nature of the lot complicates the ability of the Applicant to satisfy the Prevailing Height Requirements.
- The Board is aware that the height deviation approved herein is being driven, in many respects, because of the geographical realities associated with the existing elevated lot.
- The Board notes that if the subject lot (i.e. the Applicant's lot) was at grade, (as opposed to being elevated), then, in that event, the within Application would not require any Height Variance Relief.

The Board notes, positively, that the physical height of the home approved herein, (measured from the actual bottom of the home to the top of the home) is 34.5 ft. (i.e. a home which complies with the Borough's 35 ft. height limitation). However, the within height deviation stems from how the Borough's prevailing Zoning Ordinance requires a principal structure (on an elevated lot) to be actually measured.

- Notwithstanding the height deviation, the structures approved herein will not overpower/overwhelm the site, the area, or the neighborhood.
- The home approved herein (with the non-conforming height,) will not be inconsistent with the appearance/height of other homes in the area (on similarly situated elevated lots).
- Though the Board is not typically inclined to grant height variance relief for a principal structure (in the absence of compelling circumstances), the Board Members recognize that the need for a height variance in the within situation is driven, in many respects, by the approximate 5 foot rise / change of grade at the site.
- The elevated nature of the existing lot complicates / compromises the ability of the within Applicant to comply with the Prevailing Height Regulations.

- Notwithstanding the Height Variances granted herein, the Board Members acknowledge that, per the testimony and evidence presented, the height of the home approved herein will be consistent with the heights of other homes in the immediate area. Specifically, the testimony indicated that one of the immediately adjacent houses has a height of approximately 39.5 feet; whereas the house on the other side of the subject property has an approximate height of 41.2 feet. Thus, as referenced, the Board finds that the height approved herein (on the elevated lot) will not be dramatically inconsistent with the heights of other single-family homes in the immediate area.
- The Board is also aware that the height of the new home approved herein will be lower than the height of the existing (and to-be-demolished) structure.
- But for the significant approximate 5 foot change / rise of grade at the property, the Board notes that the height of the home approved herein would comply with the Borough's Prevailing / typical Height Requirements.
- The nature of the elevated lot complicates the ability of the Applicant to comply with the Prevailing Height Requirements in an architecturally appropriate / aesthetically pleasing fashion.
- The nature of the elevated lot also complicates the ability of the Applicant's representatives to satisfy all Swimming Pool Elevation Standards.
- Notwithstanding the Variance relief requested herein, the within approval is conditioned upon the Applicant's representatives submitting acceptable grading / drainage details to the Borough Engineer, for his review and approval.
- Given the elevated nature of the subject lot, and the calculation method used by the Borough of Sea Girt, (for measuring Building Height), in many ways, the subject lot is a unique lot.
- Given the nature of the elevated lot, and how the Borough measures building height, it is, essentially, a hardship for the Applicant herein to comply with the Borough's prevailing height requirements.

- If the Height Variance were not granted, the same could, under the circumstances, and per the testimony and evidence presented, potentially compromise the architectural integrity, beauty, and functionality of the proposed home.
- The Applicant's demolition / construction plans are reasonable under the circumstances and reasonable per the conforming size of the existing Lot.
- The Applicant's site / lot can physically accommodate the improvements proposed / approved herein.
- Approval of the within Application will not have an adverse aesthetic impact on the site or the neighborhood.
- 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 new construction approved herein will not over-power / overwhelm the subject Lot.
- Upon completion, the newly constructed home approved herein will not over-power / dwarf other homes in the area.
- The construction approved herein is 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 existence of sufficient parking is of material important to the Board – and but for the same, the within Application may not have been approved.
- The Application as presented may ultimately require a potential variance for the window wells. Specifically, per the prevailing zoning ordinance, no window well may be installed in an area designated as a required setback; whereas, in the within situation, the window wells on the north side of the dwelling may possibly encroach into the side yard setback. Thus, potential variance relief is required.

- The Applicant's professional representatives testified that they would prefer to avoid any window well variance relief. The Applicant's professional representatives also testified that they would utilize good faith efforts to avoid such window well variance relief. However, because of the on-site conditions, and because of prevailing Building / Construction Code Requirements, the Applicant's representatives were not sure if they could totally avoid the aforesaid variance relief.
- There was an extensive on-the-record discussion regarding the window wells, the window well regulations, the purposes for the said regulations, and the need for potential Variance relief.
- The Board accepts the good faith and honest testimony of the Applicant's professional representatives in the said regard.
- Based upon the testimony and evidence presented, the Board is aware that the home has been designed so as to have low-profile window wells (in the sense that the same will only have a reduced projection at the basement level).
- Additionally, and importantly, the Board is aware that the proposed window wells will not encroach, or otherwise compromise, the 5 foot window clearance which is necessary for first responders / occupants to safely exist / maneuver the property (in the event of an emergency).
- Based upon the above, to the extent the minor window well Variance relief is necessary, the Board finds that the said relief can be granted without compromising the public health and safety.
- But for confirmation that the window well relief can be granted without compromising the public health and safety, the said Variance relief might not have been granted.
- The newly constructed 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 exceeds, the Prevailing Lot Area Requirements. Specifically, a 7,500 square foot lot is

required in the subject zone – and the within lot has a lot area of 9,744 square feet. 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 existing 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 Use / "d" Bulk Standards.
- The architectural design of the new home approved herein will not be inconsistent with the architectural character of other single-family homes in the area (on other similarly situated lots).
- 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.
- The new home approved herein will not be inconsistent with other single-family improvements located within the Borough.
- 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.

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

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

CONDITIONS

During the course of the Hearing, the Board has requested, and the Applicant's representatives have 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 July 30, 2019 last revised September 11, 2019 (A-6).
- c. The Applicant shall cause the Plans to be revised so as to portray and confirm the following:
 - Clarification that the height of the new single-family home shall not exceed 39.5 ft.
 - Confirmation that the site will have 2 drywells (front and rear) which will be interconnected, and which will not send any overflow onto any adjacent properties. (The details for the same shall be approved by the Board Engineer.)
 - Confirmation that any drywells at the site shall be installed and maintained in accordance with Manufacturer Standards and in accordance with "Best Practice" Standards.
 - Confirmation that the size of the proposed deck shall be reduced (so as to eliminate the need for a Building Coverage Variance).
 - Confirmation that the Applicant shall comply with the Prevailing Building Coverage Requirements (as no such Variance is granted).

- Confirmation that the air conditioner will be relocated from the south side of the property to a zoning-compliant location in the rear yard area.
 - Confirmation that landscaping and lighting details shall be revised, per the Requirements of the Board Engineer Review Memorandum (A-6).
 - Confirmation that the proposed inground pool will have a salt-water cartridge filter system.
 - Confirmation that the Applicant shall install a Code-compliant pool fence.
 - Confirmation that the Applicant, and any subsequent Owner / Applicant / Occupant shall not utilize the cabana as a dwelling unit.
 - Confirmation that the Applicant's representatives will attempt, in good faith, to eliminate the proposed window wells variance relief (if at all possible), and that the Applicant shall only install non-compliant window wells (on the north side of the property), if necessary. Additionally, in the event any non-conforming window wells are installed on the north side of the property, the same shall not encroach more than 1-2 feet into the side yard area.
- d. The Applicant's representatives shall provide the Board Secretary and the Board Engineer with a copy of the Statement of No Interest issued from the Monmouth County Planning Board.
- e. The Applicant shall obtain any and all outside approvals which may be necessary.
- f. The Applicant shall obtain any necessary / applicable demolition permits.
- g. Unless otherwise waived by the Board Engineer, grading / drainage details shall be submitted to the Board Engineer (for his review and approval).
- h. The Applicant shall manage storm-water run-off during and after construction (in addition to any other prevailing/applicable requirements/obligations.)

- i. 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
- j. If applicable, the proposed improvement shall comply with applicable Provisions of the Americans with Disabilities Act.
- k. 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.
- l. 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.
- m. 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.
- n. 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.
- o. The Applicant shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.
- p. If required by the Board / Borough Engineer, the Applicant shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.
- q. 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.

- r. **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-approval conditions are not necessarily structurally sound, the Applicant and its representatives are not permitted to unilaterally deviate or build beyond the scope of the Board Approval. Thus, for instance, if the Board grants an Application for an existing building / structure to remain, the same cannot be unilaterally demolished (without formal Borough / Board consent), regardless of the many fine construction reasons which may exist for doing so. That is, the bases for the Board's decision to grant Zoning relief may be impacted by the aforesaid change of conditions. As a result, Applicant and its representatives are not to assume that post-approval deviations can be effectuated. To the contrary, post-approval deviations can and will cause problems. Specifically, any post-approval unilateral action, inconsistent with the testimony / plans presented / approved, which does not have advanced Borough / Board approval, will compromise the Applicant's approval, will compromise the Applicant's building process, will create uncertainty, will create stress, will delay construction, will potentially void the Board Approval, and the same will result in the Applicant incurring additional legal / engineering / architectural costs. The Applicant is encouraged to be mindful of the within – and the Borough of Sea Girt, and the Sea Girt Planning Board, are not responsible for any such unilateral actions which are not referenced in the testimony presented to the Board, and / or the Plans approved by the Board. Moreover, Applicants are to be mindful that the Applicants are ultimately responsible for the actions of the Applicants, their Agents, their representatives, their employees, their contractors, their engineers, their architects, their builders, their lawyers, and other 3rd parties.**

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

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

BE IT FURTHER RESOLVED, that the granting of the within Application is expressly made subject to and dependent upon the 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: Larry Benson, Karen Brisben, Jake Casey, Eileen Laszlo,
Raymond Petronko, Robert Walker, John Ward, Norman
Hall

AGAINST THE APPLICATION: None

ABSTENTIONS: None

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

Ayes: Karen Brisben, Jake Casey, Eileen Laszlo, Raymond Petronko, John Ward, Norman Hall

Noes: None

Abstained: None

Ineligible to Vote: Mayor Ken Farrell

Absent: Carla Abrahamson, Larry Benson, Robert Walker

The last Resolution was approval for variance relief for Block 55, Lot 6, 302 Stockton Boulevard, owned by John Gelson, to allow an addition on an existing home.

Mr. Kennedy went over the points of the Resolution, answered a few questions on this and then the following Resolution was presented:

WHEREAS, John F. Gelson has made Application to the Sea Girt Planning Board for the property designated as Block 55, Lot 6, commonly known as 302 Stockton Boulevard, Sea Girt, New Jersey, within the Borough's District 1, East Single-Family Zone, for the following approval: Bulk Variances associated with an Application to construct an addition over the existing garage; and

PUBLIC HEARING

WHEREAS, the Board held a Public Hearing on September 18, 2019, Applicant having filed proper Proof of Service and Publication in accordance with Statutory and Ordinance Requirements; and

EVIDENCE / EXHIBITS

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

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- *Development Application Package, introduced into Evidence as A-1;*
- *Architectural Plans, prepared by Michael Mastrocola, RA, dated March 31, 2019, introduced into Evidence as A-2;*
- *Survey, prepared by Paul K. Lynch, P.L.S., dated July 10, 2019,, introduced into Evidence as A-3;*
- *Leon S. Avakian Inc., Review Memorandum, dated August 26, 2019, introduced into Evidence as A-4;*
- *Application Package containing pictures and plan, distributed at the meeting, introduced into Evidence as A-5;*
- *Affidavit of Service; and*
- *Affidavit of Publication.*

WITNESSES

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

- John F. Gelson, Esq., Applicant;

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 since approximately 2012.
- There is an existing 1 ½ story single-family home at the site, with an attached garage.
- The Applicant lives at the site.

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- Upon information and belief, the existing home was constructed in or about 1942.
- The existing home was not built for the needs of a modern family.
- The existing home is quite small, and there is a need for increased living space at the site.
- As such, the Applicant is proposing the following:
 - Construction of an addition over the existing garage;
- The proposed addition will lie within the confines of the existing building envelope at the site.
- The Applicant anticipates relocating from the home (during the construction / renovation process).
- The Applicant anticipates having the construction / renovation work completed in the near future.
- The Applicant will be utilizing Licensed Contractors in connection with the construction / renovation process.

VARIANCES

WHEREAS, the Application as submitted, requires approval for the following

Variances:

BUILDING COVERAGE: Maximum 20% allowed; whereas 27.16% proposed.

FRONT SETBACK: 40 ft. required; whereas 25 ft. exists; and 32 ft. proposed (to the 2nd story addition).

PUBLIC COMMENTS

WHEREAS, there were no comments, questions, statements, and / or objections presented by any members of the public in connection with the Application; and

FINDINGS OF FACT

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

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

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

33. The subject property is located at 302 Stockton Boulevard, Sea Girt, New Jersey, within the Borough's District 1, East Single-Family Zone.

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

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

36. In order to increase the functionality of the existing home, and in order to increase living space, the Applicant proposes the following:

- Construction of an addition over the existing garage;

37. Such a proposal requires Bulk Variance approval.

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

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

- The existing and to-be-continued single-family use at the site is a permitted Use in the Zone.
- There is an existing single-family home at the site, with an attached garage.
- There is a need for increased living space at the site – and the within Application has been designed to accommodate such a need in a non-invasive fashion.

- The proposed addition will be constructed over the existing garage.
- The location of the proposed addition (i.e. over the existing garage) is practical, logical, and appropriate.
- The fact that the addition will be located over the existing garage confirms that there will be no material change to the existing ground-level footprint of the home.
- The fact that the addition will be located over an existing garage furthermore reinforces the notion that the addition will be constructed over land which has already been disturbed.
- In conjunction with the above point, there will be no new material land disturbance in connection with the construction / renovation approved herein.
- The Application as presented requires a Building Coverage Variance. The relevant calculations in the said regard include the following:

Maximum allowable building coverage	20%
Existing building coverage	21.3%
Proposed building coverage	27.16%

- Typically, the Board Members are very sensitive about deviating from the Building Coverage Requirements – and typically, the Board would only grant Variance relief in compelling situations.
- For the reasons set forth herein, and the reasons set forth during the Public Hearing process, the Board finds that sufficiently compelling reasons exist to grant the requested Variance relief.
- The Board is aware that in many ways, the requested Building Coverage Variance is more technical in nature (than a substantive deviation). Specifically, per the Prevailing Zoning Regulations, the existing attached garage is not counted / included in the Building Coverage calculations. (As indicated, the existing Building Coverage at the site is 21.3%.) However, with the addition to be constructed over the existing garage, the existing garage will become an

integrated garage, with living space. Per the Prevailing Zoning Regulations, the integrated garage space (i.e. the entire garage) is, in fact, now included in the Building Coverage calculations. Thus, upon construction of the addition over the garage, as approved herein, the Building Coverage will increase from 21.3% to 27.16%, and hence, the Variance relief is required.

- Importantly, there is no change to the existing ground-level footprint of the existing structure. Rather, as indicated, the Applicant herein is merely constructing an addition over the existing garage.
- Typically, Applicants seeking Building Coverage Variances are proposing to construct some type of addition / improvement which usually results in a physical enlargement of the building footprint / building envelope – which is not proposed / approved herein.
- The Board is aware that the Building Coverage deviation stems from the fact that the attached garage is not currently included in the Building Coverage calculations – but that the same will be included once the addition is constructed over the same.
- The Board acknowledges that the within situation is a very unique situation.
- The Board is also aware that typical / adverse by-products associated with other excessive Building Coverages are not present herein (resulting from the fact that the Building Coverage deviation stems from the construction of an addition over the existing garage).
- Per the testimony and evidence presented, the within Application complies with the Impervious Coverage Requirements.
- The Application as presented requires a Front Yard Setback Variance. The relevant measurements in the said regard include the following:

Required front yard setback	40 ft.
Existing front yard setback	25 ft.
Proposed front yard setback	32 ft.
(to the 2 nd story dormer)	

- Again, the Board recognizes that the 25 ft. Front Yard Setback is an existing condition, and that the proposed garage addition approved herein will have a 32 ft. Front Setback, significantly in excess of the existing 25 ft. Front Yard Setback.
- The Board is aware that with the existing ground-level structure having a Front Setback of 25 ft., that a 2nd story addition (as approved herein) will likely need to honor the same or similar Setback measurements.
- The construction of an addition over an existing garage (which has a front setback materially different from the ground-level footprint of the garage) would compromise the overall aesthetic appearance of the structure.
- The construction of an addition over an existing garage (which has a front setback materially different from the ground-level footprint of the garage) would compromise the overall architectural charm of the addition.
- The Board is also aware that the subject Lot is an undersized Lot. Specifically, the minimum required Lot size in the Zone is 7,500 SF; whereas 6,973 SF exists.
- The Board recognizes that the undersized Lot is an existing condition, which is not being exacerbated as a result of the within approval.
- The Board recognizes that under the circumstances, the undersized nature of the Lot compromises the ability of the Applicant to satisfy all Prevailing Bulk Requirements.
- The Board is aware that other development options could have been sought to expand the home in ways which were much more impactful than presented herein – and the Board appreciates the Applicant’s modest and reasonable proposal.
- Per the testimony and evidence presented, the Board is aware that the existing house is only approximately 18 ft. deep – further reinforcing the modest nature of the existing home and the within proposal.
- The subject site can physically accommodate the renovations approved herein.

- The Applicant's site / lot can physically accommodate the improvements proposed / approved herein.
- 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.
- 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.
- As indicated, upon information and belief, the existing home was built in or about 1942. The Board appreciates the Applicant's willingness to renovate and improve an older home (as opposed to mere demolition).
- There is value in approving Applications which preserve older homes.
- There is a significant amount of demolition occurring within the Borough of Sea Girt – and it is refreshing that the Applicant herein has decided to preserve an existing / older structure.
- The Borough's Master Plan essentially encourages the preservation of older homes when the same is possible – and approval of the within Application will advance such a goal / objective.
- There is a functional, practical, architectural, and aesthetic value in preserving the existing structure.
- Preservation of older homes represents a legitimate development goal.

- Preserving an older home is appropriate under the circumstances.
- The benefits of preserving an older home will benefit the Sea Girt community, now and in the future.
- Per the testimony and evidence presented the existing home, understandably, has some functional / practical limitations. For instance, the testimony indicated that some of the rooms are quite small, and, in that the existing home was constructed in or about 1942, the existing home was just not built for the needs of a modern family. The Board is aware that some others might utilize the said existing conditions / limitations as a basis for demolition of the existing structure, and the reconstruction of a new building. Against the aforesaid backdrop, the Board applauds the Applicant's preservation efforts.
- The Board is also aware that sometimes, preservation efforts require the granting of Variance relief so as to essentially allow the retrofitting of an existing dwelling unit.
- The benefits of granting the Variances and preserving the existing older home out-weigh any detriments associated with the Application.
- The Board is aware that there are societal benefits associated with approving Applications which allow older structures to be preserved.
- 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 (on similarly situated lots.)
- 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.
- The renovation approved herein will not be inconsistent with other single-family improvements located within the Borough.
- 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, the Board is of the unanimous opinion that the requested relief can be granted without causing substantial detriment to the public good.

CONDITIONS

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

- s. The Applicant shall comply with all promises, commitments, and representations made at or during the Public Hearing process.

- t. The Applicant shall comply with the terms and conditions of the Leon S. Avakian, Inc. Review Memorandum, dated August 26, 2019 (A-4).
- u. The Applicant shall comply with any Affordable Housing Contributions / Directives as required by the State of New Jersey, the Borough of Sea Girt, C.O.A.H., the Court System, and any other Agency having jurisdiction over the matter.
- v. The Applicant shall cause the Plans to be revised so as to portray and confirm the following:
 - The inclusion of a note to confirm the correct building height calculations, per the Review Memorandum of the Board Engineer.
 - The inclusion of a drywell, if determined necessary by the Board Engineer. (The details for the same shall be reviewed and approved by the Board Engineer.)
 - The inclusion of a note confirming that any installed drywell shall be installed and maintained in accordance with industry standards and other best practice requirement.
 - The inclusion of a note confirming that there can be no further expansion of the garage or garage addition, absent further / formal approval of the Planning Board.
- w. Unless otherwise waived by the Board Engineer, grading / drainage details shall be submitted so as to confirm the absence of any adverse impacts associated with the within proposal.
- x. The Applicant shall manage stormwater run-off during and after construction (in addition to any other prevailing / applicable requirements / obligations.)
- y. 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

- z. If applicable, the proposed improvement shall comply with applicable Provisions of the Americans with Disabilities Act.
- aa. The proposed structure shall comply with the Borough's Prevailing Height Regulations.
- bb. 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.
- cc. 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.
- dd. 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.
- ee. The Applicant shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.
- ff. If required by the Board / Borough Engineer, the Applicant shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.
- gg. 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.
- hh. **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 his representatives are not permitted to unilaterally deviate or build beyond the scope of the Board Approval. Thus, for instance, if the Board grants an Application for an existing building / structure to remain, the same cannot be unilaterally demolished (without formal Borough / Board consent), regardless of the many fine construction reasons which may exist for doing so. That is, the bases for the Board's decision to grant Zoning relief may be impacted by the aforesaid change of conditions. As a result, Applicant and his representatives are not to assume that post-approval deviations can be effectuated. To the contrary, post-approval deviations can and will cause problems. Specifically, any post-approval unilateral action, inconsistent with the testimony / plans presented / approved, which does not have advanced Borough / Board approval, 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, their Agents, their representatives, their employees, their contractors, their engineers, their architects, their builders, their lawyers, and other 3rd parties.

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

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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: Larry Benson, Karen Brisben, Jake Casey, Mayor Ken Farrell, Eileen Laszlo, Raymond Petronko, Robert Walker, John Ward, Norman Hall

AGAINST THE APPLICATION: None

ABSTENTIONS: None

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

Ayes: Karen Brisben, Jake Casey, Mayor Ken Farrell, Eileen Laszlo, Raymond Petronko, John Ward, Norman Hall

Noes: None

Abstained: None

NEW BUSINESS:

The Minor Subdivision for Borough property to create two buildable lots, which was to be heard this evening, was postponed to the Wednesday, December 18, 2019

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meeting of the Planning Board, this request coming from the Borough Council. The Board agreed that Council should re-notice for this matter as this has been postponed enough to warrant another noticing. Mr. Kennedy also commented he had received a waiver of time to approve the subdivision from the Borough attorney, Mr. Montenegro.

OTHER BUSINESS:

At this time Mr. Ward gave a brief report on the Downtown Committee and the revitalization plans. He handed out a timeline to get this finalized as well as a Charter paper (attached at the end of the Minutes). Mr. Ward said he had met with the Borough Administrator, Mrs. Carafa, and went over the information with her; a website has been created on the Borough website – downtownreviewcmtt@seagirtboro.com. Mr. Ward said this is an open website where people can give their ideas; Chairman Hall asked how this will be promoted and Mr. Ward said Mrs. Carafa will put this in her periodically sent emails so the public will be informed. He was hoping to have something together by the spring and has been interviewing those who are interested in serving on this committee but he said he didn't want the owners of downtown properties to have preference; they will be talking to the business community as well. Mrs. Laszlo felt that some downtown people are valuable and have a long-term interest, like Chris Rice and Mr. Ward agreed and said he is the exception and he has spoken to him. Chairman Hall commented that the people he has talked to are interested in getting this going and Mr. Ward said he hoped to have a meeting by the end of the month.

There was then a brief discussion on where to meet and Chairman Hall offered the Firehouse clubroom, Mrs. Brisben said she has an extra key to the Borough Hall and they can use the upstairs in the evening. Chairman Hall wanted to have the plans for the new Borough Hall and Library in the discussion and Mr. Ward said that is not in the commercial district but Chairman Hall thought it should be included. Mayor Farrell commented on the proposed parking lot to be put in there, some want it and some don't. He then said if Council has to do something to put this area in the Commercial Zone, that may happen.

As there was no other business to come before the Board a motion to adjourn was made by Mayor Farrell, seconded by Mrs. Laszlo and unanimously approved by voice vote, all aye. The meeting was adjourned at 7:43 p.m.

Approved: November 20, 2019

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