

SEA GIRT PLANNING BOARD

WEDNESDAY, MAY 18, 2016

The Regular meeting of the Sea Girt Planning Board was held on Wednesday, May 18, 2016 at 7:30 pm in the Sea Girt Elementary School, Bell Place. In compliance with the Open Public Meetings Act, notice of this Body's meeting had been sent to the official newspapers of the Board fixing the time & place of all hearings. After a salute to the flag, roll call was taken:

Present – Karen Brisben, Eileen Laszlo, Donald Laws, Donald McLaughlin, Councilwoman Anne Morris, Raymond Petronko, Chris Randazzo, Bret Violette, Norman Hall

Absent – Carla Abrahamson, Larry Benson

Also present was Kevin Kennedy, Board Attorney; Board member Karen Brisben recorded the Minutes. There were 7 people in the audience.

CORRESPONDENCE:

The Board had received a letter from Michael Rubino, Esq. asking for an extension of time to perfect the subdivision for 311 Beacon Boulevard, John Holthusen. The house is in the process of being taken down but will pass the time allowed given by the Board to perfect the subdivision. Mr. Kennedy explained the Permit Extension Act and this approval is almost automatic, the Permit Extension Act expires on June 30, 2016 so an extension of time for perfection of the subdivision is within the law. The Board had granted him 190 days and he is within his right to have this extension. With a few more explanations to concerned Board members a motion was made by Mr. Laws, seconded by Mr. McLaughlin, to approve the extension. A roll call vote was then taken:

Ayes: Karen S. Brisben, Eileen Laszlo, Donald Laws, Donald McLaughlin, Anne Morris, Ray Petronko, Chris Randazzo, Norm Hall

Noes: None

Abstain: Bret Violette

OLD BUSINESS:

The Board turned to the approval of a Resolution for Block 10, Lot 12, 501 Ocean Avenue, John & Patricia Glassford. Mr. Kennedy explained the draft Resolution just got done as this was a complicated one to do, part of the application was denied and part of

the application was approved, so it was a split vote. He referred to the deck/balcony in the Resolution to cover all; the deck and balcony seemed to be intermingled through the application. Also, there seemed to be inconsistencies between the Engineer and the Applicant; Peter Avakian had a setback variance listed but Mr. Kennedy thought this was for an existing condition. This was a unique situation and the building coverage was already at 20.6%. The question can be asked how did they get a CO and they said they got it with no problem.

The first part of the Resolution is about the deck/balcony and that was denied, the remaining portion was approved. He then went over the conditions outlined in the Resolution and commented about the issue with CAFRA and the fire pit. He did not anticipate an appeal but he took time to get the wording correct. The Board then had a brief discussion on these findings regarding bulk variances and the deck/balcony. Mr. Henderson, who was in the audience for another matter, commented that two setback issues already exist.

The following Resolution was then presented:

WHEREAS, John and Patricia Glassford have made Application to the Sea Girt Planning Board for the property designated as Block 10, Lot 12, commonly known as 501 Ocean Avenue, Sea Girt, New Jersey, within the Borough's District 1, East Single Family Zone, for the following approval: Bulk Variances associated with an Application to effectuate a number of improvements to an existing single-family dwelling / site; and

PUBLIC HEARING

WHEREAS, the Board held a Public Hearing on April 20, 2016, 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:

- *Planning Board Application Package, introduced into Evidence as A-1;*
- *Zoning Permit Denial Letter, dated October 22, 2015, introduced into Evidence as A-2;*
- *Land Development Application Completeness Checklist, introduced into Evidence as A-3;*
- *Architectural Plan, prepared by Jeffrey G. Schneider, AIA, dated August 28, 2015, consisting of 2 sheets, introduced into Evidence as A-4;*
- *Plot Plan, prepared by Charles E. Lindstrom, PE, PP, dated February 25, 2015, consisting of 1 sheet, introduced into Evidence as A-5;*
- *Survey of property, prepared by William H. Doolittle, PLS, dated December 29, 2014, introduced into Evidence as A-6;*
- *Leon S. Avakian, Inc., Review Memorandum, dated February 12, 2016, introduced into Evidence as A-7;*
- *Correspondence from the Borough's Fire Protection Official, dated March 9, 2016, introduced into Evidence as A-8;*
- *CAFRA Permit, dated June 17, 2015, introduced into Evidence as A-9;*
- *Photograph of the subject property, taken by Allison Coffin, dated April 20, 2016, introduced into Evidence as A-10;*
- *Resolution of the Sea Girt Planning Board (Keith and Lynn Horn) (649 Ocean Avenue, Sea Girt, NJ), signed on or about October 16, 2013, introduced into Evidence as A-11;*
- *Resolution of the Sea Girt Planning Board (Jack and Ivona Howley) (3 Ocean Terrace, Sea Girt, NJ), signed on or about June 18, 2003, introduced into Evidence as A-12;*
- *Aerial photograph, introduced into Evidence as A-13;*

- *Picture of the subject property and the adjacent property, taken by Patrick McGough, on or about April 19, 2016, introduced into Evidence as McGough-1;*
- *A picture of the 2nd floor of the McGough property, taken by Patrick McGough, on or about April 19, 2016, introduced into Evidence as McGough-2;*
- *Affidavit of Service;*
- *Affidavit of Publication.*

WITNESSES

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

- John Glassford, Applicant;
- Jeffrey G. Schneider, AIA, Architect;
- Allison Coffin, Professional Planner;
- C. Keith Henderson, Esq., appearing; and

TESTIMONY AND OTHER EVIDENCE PRESENTED ON BEHALF OF THE APPLICANTS

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

- The Applicants are the Owners of the subject property.
- The Applicants have owned the subject property since approximately September of 2014.
- There is an existing single-family home at the site.
- The Applicants utilize the property as a second home.

- In order to accommodate their living needs / preferences, the Applicants are proposing a number of improvements.
- The proposed improvements include the following:
 - Construction of a 2nd story balcony / deck;
 - Construction / installation of a walkway;
 - Construction / installation of an outdoor kitchen area / patio;
 - Installation of a Fire Pit; and
 - Installation of Plantings.
- Details pertaining to the proposed improvements include the following:

2nd STORY BALCONY/ DECK

Location:	East side of the property, per the Plans (over the proposed outdoor kitchen area).
Size:	28 feet 3.5 inches x 6 feet
Open / Closed?	Open

WALKWAY

Location:	On the East side of the property, connecting the Applicants' property to the boardwalk
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OUTDOOR KITCHEN/PATIO

Location: On the Eastern portion of the home
(beneath the proposed 2nd story balcony / deck).

Size: Per Plans

Materials: Pavers

FIRE PIT

Fuel Source: Natural Gas

Height: _____

Location: East side of the proposed Patio / Kitchen area.

Additional Feature: Permanent Natural Gas Fuel Line

Installation Details: To be installed per the installation specifications
as issued by the manufacturer.

Surrounding Enclosure: _____

INSTALLATION OF PLANTINGS

Location: Per Plans.

Type: To match what the Borough is currently planting
in the immediate area.

- The Applicants will attempt to have the improvements installed as quickly as possible.
- The Applicants will be utilizing licensed contractors in connection with the renovation / construction process.

VARIANCES

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

BUILDING COVERAGE: Maximum 20% allowed; whereas 22.9% proposed.

ACCESSORY STRUCTURE (Deck, etc.) LOCATION: The prevailing Zoning Ordinance provides that decks, patios, colonnades, arbors, and similar roof-less structures are not permitted in a front or side yard. However, in the within situation, the Applicants' proposed deck, walkway, paver patio, outdoor kitchen, and natural gas fire pit are proposed to be located in a front yard area.

PUBLIC COMMENTS

WHEREAS, comments, questions, concerns, statements, and / or objections in connection with the Application were tendered by the following:

Patrick McGough

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 a portion of the Application is hereby **denied**; whereas, another portion of the

Application is hereby **approved, with conditions**. Specifically, the portion of the Application dealing with the 2nd story deck / balcony has been **denied**; whereas the remaining portion of the Application has been conditionally **approved**.

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

1. The Sea Girt Planning Board has proper jurisdiction to hear the within matter.
2. The subject property is located at 501 Ocean Avenue, Sea Girt, New Jersey, within the Borough's District 1, East Single Family Zone. (The property is physically located on the corner of Ocean Avenue and Baltimore Blvd.)
3. The subject property is rectangular in shape.
4. The subject property contains 7,500 SF; whereas a minimum of 7,500 SF is required in the subject Zone.
5. As such, the subject lot is conforming in terms of lot area.
6. A single-family home currently exists on the site.
7. Single-family use is a permitted use in the subject Zone.
8. The Applicants propose certain site improvements, including the following:
 - Construction of a 2nd story balcony / deck;
 - Construction / installation of a walkway;
 - Construction / installation of an outdoor kitchen area / patio;
 - Installation of a Fire Pit; and

- Installation of Plantings.

9. Such a proposal requires Bulk Variance approval.

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

11. With regard to the **2nd story deck / balcony portion** of the Application, and the associated **denial**, the Board notes the following:

- The Applicants' proposed 2nd story balcony / deck would have been very close to the structure on the neighboring lot. Towards that end, the Applicants did not provide legally sufficient reasons as to why Variance relief should be granted.
- The neighboring property owner, who would be the most affected by the proposed 2nd story balcony / deck, attended the Public Hearing and objected to the portion of the Application specifically related to the proposed 2nd story balcony / deck. The affected property owner complained that if the 2nd story balcony / deck were approved, the Applicants could essentially see into his child's bedroom window, thereby compromising the privacy of all involved.
- The affected neighbor also essentially expressed concern that if the Variance relief were granted, the living areas for the Applicants and the living areas of the neighbors would essentially be impermissibly intertwined (so much so that the objecting neighbor indicated that he would be able to identify the type of music being played on the Applicants' internal stereo system).
- Modern planning trends suggest sufficient distances between primary dwellings / structures, so as to promote the privacy interests of all involved.
- Approval of the building coverage Variance (associated with the proposed 2nd story balcony / deck) would compromise the privacy interests of the Applicants and the neighbor.

- Approval of the Variance Application (relating to the proposed 2nd story balcony / deck) would not advance modern planning goals and objectives.
- One purpose of the Municipal Land Use Law is to approve applications for a variety of residential uses, in appropriate locations. The excess building coverage (associated with the proposed 2nd story balcony / deck) is not, under the circumstances, appropriate.
- Given the nature of the existing structures on the Applicants' property and the neighboring property, the non-conforming building coverage is not appropriate.
- Given the location / nature of the existing structure on the Applicants' property and the neighboring property, approval of the proposed Building Coverage Variance would cause substantial detriment to the public good.
- The excess building coverage, coupled with the lack of landscaping / fencing, etc. would compromise the privacy interests of occupants of the Applicants' home and the neighboring home.
- The fact that the Applicants' lot has a conforming lot area of 7,500 square feet suggests that there are ample opportunities for the Applicants to design a conforming, or at least more conforming, proposal.
- The Applicants' representatives provided somewhat inconclusive / vague testimony regarding damage to the property experienced as a result of, and suffered during, and Hurricane / Super-storm Sandy (which Hurricane occurred before the Applicants acquired an ownership interest in the subject property). Presumably, the Applicants' arguments in the said regard were designed to help justify the need for the proposed building coverage Variance (associated with the proposed 2nd story balcony / deck). Respectfully, the Applicants' arguments in the said regard were somewhat confusing, unclear, and not totally supported by the record.
- It is feared that the non-conforming building coverage associated with the Applicants' proposal (relating to the

proposed 2nd story balcony / deck) will have an adverse impact on the site and the neighborhood.

- There was a concern that the non-conforming nature of the building coverage could detrimentally impact, or otherwise affect the values of the surrounding properties – and the Applicants did not provide legally sufficient reasons to overcome such a fear.
- The location of the proposed 2nd story balcony / deck is, under the circumstances, not appropriate.
- Because of the nature / location of the existing structures and the location of Existing structures on the adjoining lot, the Applicants' representatives did not submit legally sufficient reasons to justify the requested building coverage Variance.
- The Applicants' representatives did not provide sufficient testimony confirming that other (more conforming) development options were realistically considered.
- For the reasons set forth herein, some Members of the Board find that approval of the within portion of the Application is not consistent with the Borough's Master Plan.
- One of the purposes of the New Jersey Municipal Land Use Law (N.J.S.A.40:55D-2) is to promote the establishment of appropriate population densities which will contribute to the well-being persons, neighborhoods, and communities. For the reasons set forth herein, some Board Members are of the opinion that approval of the within Application will not advance or promote such a purpose.
- One of the purposes of the N.J. Municipal Land Use Law is "to promote sufficient space in appropriate locations for a variety of uses...", including residential uses. Some Board Members note that with the coverage proposed, the within Application does not advance such a purpose.

- For the reasons set forth herein and during the Public Hearing process, the Applicants' proposal is not fundamentally sound from a planning perspective.
- As indicated in New Jersey Law, there is a strong Legislative Policy favoring Land Use Planning by Zoning Ordinance rather than by Variance. As a result, the granting of a Variance Application must always be the exception rather than the rule. In the within matter, the Applicants did not provide sufficient testimony justifying the grant of the requested relief.
- Under New Jersey Law, it is the Applicants' burden to demonstrate sufficient reasons justifying the Variance relief - and in the within case (pertaining to the proposed 2nd story balcony / deck), the Applicants have failed to meet their burden.
- The Applicants are not automatically entitled to have their property utilized for the most profitable use.
- The development site does not contain exceptional topographic conditions or physical features which would warrant granting the relief requested herein.
- There are no extraordinary or exceptional situations uniquely affecting the development site which would warrant the relief requested herein.
- The Applicants did not prove that the purposes of the Municipal Land Use Law would be advanced by approving the within Application; rather, the within Application specifically detracts from the purposes of the Municipal Land Use Law in that such development would not promote the general welfare, would not provide sufficient area for residential uses, and would not provide a desirable visual environment through creative development techniques.

- Some members of the Board were of the opinion that approval of the within portion of the application would have, or could have, a significant and detrimental impact on adjoining properties.

Based upon the above, and for the other reasons set forth during the Public Hearing process, the Board is of the opinion that the Applicants did not satisfy the standards of relief necessary to justify the **2nd story deck / balcony** portion of the Application. As such, the said portion of the Application is hereby **denied**.

FOR THE DENIAL OF THE PROPOSED 2ND STORY BALCONY / DECK:

AYES: Carla Abrahamson, Larry Benson, Eileen Laszlo, Donald Laws,
Ray Petronko, Chris Randazzo, Norm Hall

AGAINST THE DENIAL: None

12. With regard to the **deck / walkway / patio / outdoor kitchen / fire pit / planting** portion of the Application, and the associated approval, the Board notes the following:

- The Board notes that the subject property is a corner property, with two front yards.
- The Board notes that the corner nature of the property limits development options otherwise available for the site.
- The Board Members also note that there is no real / functional / usable side yard or rear yard areas to accommodate the Applicants' proposed improvements.

- There are a number of pre-existing non-conforming conditions at the site- and approval of the within Application will not materially exacerbate the same.
- The fire pit will be fueled by natural gas, which is safer than a fire pit fueled by wood.
- A natural wood-burning fire pit would be more susceptible to flying embers / sparks, thereby increasing the likelihood of a fire. Thus, the Board would not necessarily have approved Variance relief for a wood-burning fire pit.
- The Borough's Bureau of Fire Prevention issued a Memorandum (March 9, 2016) (A-8) outlining the various conditions which need to be satisfied in order for the fire pit to be safely located / operated at the site. The Applicants have indicated their willingness to comply with the same – and, as referenced in the “condition” section of the within Resolution, compliance with the same is mandatory.
- Per the testimony / evidence presented, the fire pit will be installed by an appropriately certified individual / company, in accordance with all of the Prevailing Design Specifications from the Manufacturer.
- The property's proximity to the Atlantic Ocean renders the site an appropriate host site for a fire pit.
- There are no known safety concerns associated with the proposed host site for the fire pit.
- The proposed fire pit is designed for residential use.
- Approval of the within Application will not materially intensify the single family use at the site.
- The Board is aware of the unique factors associated with the geography of the subject site – including:
 - The notion that there is a paper street bordering the site;
 - The notion that the so-called front yard area faces the Atlantic Ocean; and

- The notion that the so-called rear yard area backs up to a private access easement.

Based upon the same, and the associated intricacies, location of the proposed fire pit is appropriate.

- Though the location of the proposed fire pit is in a so-called “front yard” area, the Board notes that the fire pit will not be visible from the public street.
- Approval of the within Application will improve the overall appearance at the site.
- Per the testimony and evidence presented, the Applicants considered other design ideas / options for the proposed improvements so as to minimize and / or otherwise eliminate the need for some of the Bulk Variances. However, per the testimony and evidence presented, the other options considered were not practical / viable.
- The improvements approved herein will architecturally / aesthetically match the existing structure.
- Approval of the within Application will not materially change / alter the footprint of the existing home.
- Approval of the within Application will not change or otherwise alter the height of the existing structure.
- The proposed improvements will architecturally and aesthetically match the existing structure.
- Approval of the within Application will make the existing home more functional, and approval will also improve the quality of life for the homeowners.
- Single-family use as proposed / approved herein is a permitted use in the subject Zone.
- The location of the proposed improvements is practical and appropriate.

- The size of the proposed improvements is appropriate, particularly given the conforming size of the existing Lot (i.e. 7,500 SF).
- The existing Lot is conforming in terms of Lot area (7,500 square feet required and 7,500 square feet exists).
- Subject to the conditions contained herein, the improvements authorized herein will not over-power / overwhelm the subject Lot.
- Upon completion, the improvements authorized will not over-power / dwarf other homes in the area – particularly in light of the nature of the surrounding uses.
- The improvements approved herein are attractive and upscale, in accordance with Prevailing Community Standards.
- The site will provide a sufficient amount of off-street parking spaces for the Applicants' needs 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.
- There was no known public opposition associated with the approved portion of the subject Application.
- Sufficiently detailed testimony / plans were presented to the Board.
- The proposed renovation should nicely complement the property and the neighborhood.
- Subject to the conditions contained herein, the proposal will not appreciably intensify the single-family nature of the lot.

- Additionally, the architectural/aesthetic benefits associated with the proposal outweigh the detriments associated with the Applicants' inability to comply with all of the specified bulk standards.
- The architectural design of the improvements will not be inconsistent with the architectural character of other single family homes in the area.
- Subject to the conditions set forth herein, the benefits associated with approving the within Application outweigh any detriments associated with the same.
- Subject to the conditions contained herein, approval of the within Application will have no known detrimental impact on adjoining property owners and, thus, the Application can be granted without causing substantial detriment to the public good.
- The improvements to be renovated herein will not be inconsistent with other 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).
- **NOTE:** During the Public Hearing process, the Board noted several conflicting calculations with regard to the existing / proposed building coverage.

The Zoning Officer's calculations appeared to suggest the following:

Maximum Coverage Allowed.....	20.00%
Existing Coverage.....	21.25%
Proposed Coverage.....	23.54%

The Board Engineer's calculations appeared to suggest the following:

Maximum Coverage Allowed.....	20.00%
Existing Coverage.....	(Not specified)
Proposed Coverage.....	22.90%

The calculations from the Applicants' Engineer suggested the following:

Maximum Coverage Allowed.....	20.00%
Existing Coverage.....	20.60%
Proposed Coverage.....	22.90%

The situation is further complicated by virtue of the following:

- i. There has been no known building coverage Variance granted for the site and, as such, it is unclear how a certificate of occupancy was issued for a non-conforming building coverage.
- ii. That notwithstanding, Certificate of Occupancy does appear to have been issued for the structure at the site (notwithstanding the non-complying building coverage).
- iii. For a variety of legal / equitable reasons, the Board is hereby retroactively legitimizing the existing non-conforming building coverage at the site.

- iv. The proposed building coverage calculations will obviously change based upon the fact that the proposed 2nd story balcony / deck portion of the Application has been denied, and will be eliminated from the Plans.

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

CONDITIONS

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

- a. The Applicants shall comply with all promises, commitments, and representations made at or during the Public Hearing process.
- b. The Applicants shall comply with the terms and conditions of the Leon S. Avakian, Inc. Review Memorandum, dated February 12, 2016 (A-7).
- c. The Applicants shall comply with the terms and conditions of the Review Memorandum, from the Sea Girt Fire Protection Official, dated March 9, 2016 (A-8).
- d. The Applicants' Application materials shall be modified / documents shall be modified so as to portray the exact nature of existing structures at the site (in terms of the Pergola, the balcony, the pillars, etc.)
- e. The Applicants shall comply with any prevailing provisions of Affordable Housing Regulations as required / mandated by

the State of New Jersey, the Borough of Sea Girt, the Judicial / Court system, and / or any other Agency having jurisdiction over the matter.

- f. The Applicants shall cause the plans to be revised so as to portray and confirm the following:
- That the fire pit will be a natural gas fire pit, and not a wood-burning fire pit.
 - To include supplemental indigenous coastal plantings in a fashion acceptable to the Borough of Sea Girt.
 - To confirm that the fire pit shall have an easily identifiable shut-off valve, to be installed / placed on the exterior of the home (in a location which is satisfactory to the Borough's Fire Officials).
 - The elimination of the initially proposed deck / 2nd story balcony / deck.
 - The elimination for the proposed building coverage Variance.
 - That the proposed plantings shall match / compliment that which Officials of the Borough of Sea Girt are currently planting in the immediate area.
- g. The Applicants shall provide written confirmation / verification (acceptable to the Board of Engineer and Zoning Officer) that the CAFRA permit specifically authorizes the installation of the proposed fire pit.
- h. The Applicants shall comply with all prevailing Ordinance requirements / regulations regarding lighting at the site.
- i. The Applicants shall comply with all prevailing FEMA / flood regulations.
- j. The Applicants shall comply with all prevailing Building Codes / Construction Code Regulations.
- k. The Board specifically finds that but for the elimination of the initially proposed 2nd story balcony / deck, no portion of the

within Application would have been approved. Thus, should there be any judicial reversal / modification of the within decisions, or any portion thereof, then, unless otherwise waived by the Board, both decisions issued herein shall be of no further force or effect.

- I. The Applicants shall obtain any applicable permits/approvals as may be required by the Borough of Sea Girt - including, but not limited to the following:
 - Building Permit
 - Plumbing Permit
 - Electric Permit
 - Demolition Permit
- m. If applicable, the proposed structure shall comply with applicable Provisions of the Americans with Disabilities Act.
- n. If applicable, grading plans shall be submitted to the Board Engineer so as to confirm that any drainage/run-off does not go onto adjoining properties.
- o. The proposed structure shall comply with the Borough's Prevailing Height Regulations.
- p. 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.
- q. The Applicants shall comply with all terms and conditions of the Review Memoranda, if any, issued by the Board Engineer, Borough Engineer, Construction Office, the Department of Public Works, the Bureau of Fire Prevention and Investigation, and/or other agents of the Borough.
- r. The Applicants shall obtain any and all approvals (or Letters of No Interest) from applicable outside agencies - including,

but not limited to, the State of New Jersey, the Department of Environmental Protection, the Monmouth County Planning Board, and the Freehold Soil Conservation District.

- s. The Applicants shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.
- t. If required by the Board / Borough Engineer, the Applicants shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.
- u. Unless otherwise agreed by the Planning Board, the approval shall be deemed abandoned, unless, within 24 months from adoption of the within Resolution, the Applicants obtain a Certificate of Occupancy (if necessary) for the construction / development approved herein.

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

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

BE IT FURTHER RESOLVED, that the granting of the within Application is expressly made subject to and dependent upon the Applicants' compliance with all

other appropriate Rules, Regulations, and/or Ordinances of the Borough of Sea Girt, County of Monmouth, and State of New Jersey.

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

A motion was then made by Mr. Randazzo to approve the Resolution, as presented, this seconded by Mr. Petronko and then by the following roll call vote:

Ayes: Eileen Laszlo, Donald Laws, Ray Petronko, Chris Randazzo, Norm Hall

Noes: None

Not Eligible to Vote: Karen Brisben, Donald McLaughlin, Anne Morris, Bret Violette

The Board then considered approval of a Resolution for variance relief for Block 59, Lot 1, 401 Crescent Parkway, Michael & Laura Ippolito, for patio & fence around pool. Mr. Kennedy went over some points on the Resolution and the conditions. The following was then presented:

WHEREAS, Michael Ippolito has made Application to the Sea Girt Planning Board for the property designated as Block 59, Lot 1, commonly known as 401 Crescent Parkway, 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 in-ground swimming pool and associated amenities; and

PUBLIC HEARING

WHEREAS, the Board held a Public Hearing on April 20, 2016, 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:

- *Planning Board Application Package, dated on or about February 1, 2016, introduced into Evidence as A-1;*
- *Zoning Permit Denial Letter, dated January 5, 2016, introduced into Evidence as A-2;*
- *Variance Plan, prepared by KBA Engineering Services, LLC, dated January 21, 2016, consisting of 1 sheet, introduced into Evidence as A-3;*
- *Survey, prepared by Acre Survey Company, Inc., dated February 6, 2014, last revised March 10, 2015, introduced into Evidence as A-4;*
- *Leon S. Avakian, Inc. Review Memorandum, dated March 28, 2016, introduced into Evidence as A-5;*
- *Correspondence from the Board Engineer, to the Zoning Officer, dated January 5, 2016, introduced into Evidence as A-6;*
- *Land Development Application Completeness Checklist, dated January 29, 2016, introduced into Evidence as A-7;*
- *Photo-board, containing 10 photographs of the subject property and surrounding properties, (two-sided), introduced into Evidence as A-8;*

- *Affidavit of Service; and*
- *Affidavit of Publication.*

WITNESSES

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

- Michael Ippolito, Applicant;
- Joseph Kociuba, Planner and Engineer;
- Michael Rubino, Esq., appearing; and

TESTIMONY AND OTHER EVIDENCE PRESENTED ON BEHALF OF THE APPLICANT

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

- The Applicant is the Owner of the subject property.
- The Applicant has owned the subject property for several years.
- There is an existing single-family home at the site.
- The Applicant desires to construct an in-ground swimming pool (and associated amenities) at the site.
- Details pertaining to the proposed in-ground pool include the following:
 -

Type of Pool:	In-ground vinyl liner pool
Dimensions:	15 ft. wide by 27 ft. deep
Pool shape:	Rectangular
Pool location:	Behind the existing home, per Plans.
Maximum water surface area of pool:	405 SF
Pool Cover Feature:	The proposed pool will have an automatic cover.

- The Applicant would like to have the pool completed and installed as quickly as possible.
- The Applicant will be utilizing licensed contractors in connection with the installation of the pool.

VARIANCES

WHEREAS, the Application as presented and modified requires approval for the following Variances:

*FENCE HEIGHT (ALONG FOURTH AVENUE):
Maximum 3 ft. allowed; whereas 4 ft. proposed.*

POOL LOCATION: The Prevailing Borough Regulations do not permit a pool patio to be located in a front yard or side yard area; whereas, the pool patio proposed herein is located in a side yard.

POOL SIDE YARD SETBACK: 15 ft. required; whereas 9.55 ft. proposed.

PUBLIC COMMENTS

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

- Dennis Foley
- Lisa Foley
- William Foley
- Stan Koreyeva

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:

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

14. The subject property is located at 401 Crescent Parkway, Sea Girt, New Jersey, within the Borough's District 1, East Single Family Zone.

15. The subject site currently contains a single-family home.

16. Single-family use, as aforesaid, is a permitted use in the Zone.

17. The Applicant proposes to construct a pool and associated amenities.

18. The details of the proposed pool and amenities are set forth on the submitted Plans and were further described to the Board during the Public Hearing Process.

19. Such a proposal requires approval for several Bulk Variances.

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

21. With regard to the Application, and the requested relief, a majority of the Board notes the following:

- The proposed pool is a permitted Accessory Use in the subject Zone.
- The Prevailing Section of the Borough's Ordinance requires that a pool have a maximum water surface area of 800 square feet. In the within situation, the Applicant is proposing a pool of 405 square feet, which conforms with the Borough's Prevailing Requirements.
- The Board notes that the pool approved herein is not overly large.
- The Plans were initially submitted provided a patio with a West-side set back of only 1 foot. The same was not acceptable to the Board Members, and no testimony was presented to justify the same. However, in the midst of the Public Hearing process, the Applicant's representatives withdrew the said request for Variance. Specifically, the Applicant agreed to modify the Plans so that the western side setback would be increased to a conforming 11.5 feet – and the said concession assuaged many of the Board Members.
- The Board recognizes that the subject property is a corner lot – with two essential front yards, which complicates the ability to construct a Zoning compliant and functional pool on the site.

- Per the testimony presented, the pool has been designed to be located in the portion of the site which should receive maximum sun exposure during the summer months.
- Per the testimony and evidence presented, the patio surrounding the pool was not designed to be a lounge area. That is, the said patio area has not been designed to accommodate chairs or lounges. Rather, the same has been designed for safety reasons, so as to serve as a physical buffer / differentiation area between the pool water and lawn.
- Per the testimony and evidence presented, there are other similarly situated pools in side yard areas (based upon circumstances similar to those present herein.)
- Per the testimony and evidence presented, and per the conditions set forth herein (including the need for extra landscaping), the pool approved herein should not be visible from the street or adjacent properties.
- A majority of the Board furthermore notes that a reduction in the size of the proposed pool would neither be practical nor feasible.
- The proposed pool will be appropriately shielded with landscaping / fencing.
- The proposed landscaping / shrubbery / plantings will appropriately shield the neighbors and public from the proposed improvements.
- The pool and the proposed amenities will be located in practical and reasonable locations.
- The proposed and to-be-maintained landscaping / fencing will minimize the impact that approval will have on the adjoining owners and the neighborhood.
- Approval of the within Application will not increase the size / shape / footprint / height of the existing home.
- Subject to the conditions contained herein, the Applicant's site / lot can physically accommodate the improvements proposed/approved herein.

- Subject to the conditions contained 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.
- 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.
- The existing Lot is conforming in terms of Lot area (i.e. 7,500 SF is required, and 11,250 SF exists).
- Subject to the conditions contained herein, the improvements approved herein will not over-power / overwhelm the subject Lot.
- The renovation / installation approved herein is attractive and upscale, in accordance with Prevailing Community Standards.
- Approval of the within Application will not detrimentally affect existing parking requirements / demands at the site.
- Sufficiently detailed testimony / plans were presented to the Board.
- The proposed pool 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.
- The proposed pool / patio will be significantly shielded with landscaping / fencing, thereby minimizing any aesthetic impact on adjoining properties.

- Subject to the conditions contained herein, approval of the within Application will not compromise health and safety of the occupants.
- The size of the proposed pool / patio is reasonable under the circumstances.
- Per the Prevailing Borough Regulations, the bottom elevation of the pool structure shall not be less than 2 ft. above the seasonal high ground water elevation. In the within situation, the Application conforms with such a Requirement.
- The Prevailing Borough Ordinance provides that in the case of the corner lot, no swimming pool shall be located closer to the side street than the Prevailing Setback Line for the said Street. In the within situation, the proposed pool along the Fourth Avenue frontage is set back approximately 15.2 ft., which conforms with the Prevailing Borough Requirement.
- The proposed pool equipment is located in the rear yard area, as required by the Prevailing Borough Ordinance.
- The Application as presented requires a Variance for the height of the pool fence (maximum 3 feet allowed; whereas 4 feet proposed). The Board notes that technical compliance with the 3 foot municipal requirement would likely conflict with the Prevailing Building / Construction Code Requirements that a fence surrounding a pool have a minimum height of 4 feet.
- The existence of only a 3 foot fence surrounding a pool could potentially compromise the health and safety of others.
- The existence of only a 3 foot fence surrounding the pool could potentially contribute to the pool being viewed as an “attractive nuisance” by area children.
- The existence of only a 3 foot fence surrounding the pool could potentially create insurance / liability issues for the Applicant, and any successor owners.
- The installation of a 4 foot fence around the pool should likely promote health and safety at and around the site.

- The Board Members engaged in a civil and good-faith debate regarding the merits of the proposal. Those arguments against approval focused on the following points:
 - i. The subject Lot is an oversized 11,250 SF Lot (whereas 7,500 SF is otherwise required in the Zone) – and the concept that the Applicant should be able to place a conforming pool on a conforming 11,250 SF Lot.
 - ii. The lack of a recognized hardship, as referenced in Prevailing Case Law.
 - iii. The concept that a compliant and Variance-free pool / patio can and should be able to be constructed / installed on an 11,250 SF Lot.
 - iv. The Applicant, as a fairly recent Purchaser of the property, could have, and should have, performed more due diligence (regarding feasibility issues and zoning regulations) prior to consummating the purchase.

Notwithstanding the above, for the reasons set forth herein and during the Public Hearing process, the Board is of the collective opinion that the benefits of granting the approval out-weigh the detriments associated with the same.

- Additionally, the 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 design of the improvements approved herein will not be inconsistent with the architectural character of similar improvements on other single family lots in the area.

- Subject to the conditions set forth herein, the overall benefits associated with approving the within Application outweigh any detriments associated with the same.
- Subject to the conditions contained herein, approval of the within Application will have no known detrimental impact on adjoining property owners and, thus, the Application can be granted without causing substantial detriment to the public good.
- The improvements to be installed herein will not be inconsistent with other similar 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:

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

- w. The Applicant shall comply with the terms and conditions of the Leon S. Avakian, Inc. Review Memorandum, dated March 28, 2016 (A-5).
- x. The Applicant shall cause the Plans to be revised so as to portray and confirm the following:
 - That the patio setback on the western side of the property shall be a conforming 11.5 feet (as opposed to the 1 foot setback proposed with the initially submitted plans). (The excess space created, as a result of the modification, shall be lawn area.)
 - That the pool shall be appropriately screened, per Ordinance requirements.
 - That additional landscaping (including on the western side of the property) shall be planted (to the satisfaction of the Board Engineer).
 - That the eastern-side (Fourth Avenue) setback shall be changed from 5 feet to 4 feet.
 - That the proposed patio shall be reduced in size from a 5 foot width (on the eastern side) to a 4 foot width.
 - That the fence on the eastern portion of the property line shall be 10 feet from the property line (as opposed to the 9 foot distance set forth in the initially submitted plans.)
 - That the proposed patio shall be 10.55 feet off of the eastern property line (Fourth Avenue side).
 - That there will be no change to the existing grading / drainage patterns, which would detrimentally affect adjoining properties.
 - That the pool lighting / acoustics shall comply with Prevailing Municipal / Code Requirements.

- That applicable, the pool equipment shall be appropriately vented, per Prevailing Municipal / Code Requirements.
- y. Per the testimony presented, the Application shall be modified to reflect that the Applicant has withdrawn the request for the patio setback Variance on the western side of the property.
- z. The Applicant shall comply with all Prevailing Code Requirements.
- aa. Unless waived by the Board Engineer, the Applicant shall submit a Grading Plan / Drainage Plan / Stormwater Management Plan, which shall be approved by the Board Engineer.
- bb. The Applicant shall manage storm-water run-off during and after construction (in addition to any other prevailing/applicable requirements/obligations.)
- cc. 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
- dd. 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.
- ee. The construction / installation, 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.
- ff. 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.

- gg. 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.
- hh. The Applicant shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.
- ii. If required by the Board / Borough Engineer, the Applicant shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.
- jj. 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 necessary) for the construction / development / installation approved herein.

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 misrepresentations or actions by the Applicant contrary to the representations made before the Board shall be deemed a violation of the within approval.

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

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

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

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

Ayes: Eileen Laszlo, Donald Laws, Ray Petronko, Chris Randazzo, Norm Hall

Noes: None

Not Eligible to Vote: Karen Brisben, Donald McLaughlin, Anne Morris, Bret Violette

NEW BUSINESS:

The Board then turned to an application for a Minor Subdivision for Block 72, Lot 5, 511 Philadelphia Boulevard, Estate of Marion Reid (applicants – Steven Lipstiz & Robert Reid), to allow the creation of two conforming lots.

The proper fees were paid, taxes are paid to date; there was no notice in the newspaper or to the property owners within 200 feet as there are no variances being requested for the subdivision.

Mr. Kennedy marked the following exhibits:

- A-1. Subdivision application dated 1/11/16.
- A-2. Board Engineer's report dated 4/19/16.
- A-3. Subdivision Committee report dated 2/3/16.
- A-4. Land Use Development Checklist.

Mr. C. Keith Henderson, Esq. came forward to present this application. He said that present tonight was one of the Executors of the Reid Estate should the Board want him to speak.

Mr. Henderson explained that this is a conforming subdivision, they have reviewed and agreed with the report from Mr. Avakian, Board Engineer, and said this

subdivision will be recorded by deed. Mrs. Brisben asked about a very large holly tree that is in front of the property, she wanted to know if that will be preserved; Mr. Henderson did not know and said this property is already under contract. Mr. Kennedy said he can put in the Resolution that a good faith effort should be made to preserve it but Mr. Henderson did not know if the Board has the right to ask this as there is no Ordinance in Sea Girt on protecting the trees. He can pass this request on to the purchaser, though. The buyer is a Sea Girt resident and he is also aware of the moratorium on opening the street, if he wants to he will have to apply to Mayor and Council.

As there were no other questions from the Board the hearing was opened to the public and Mr. John Ward of 509 Trenton Boulevard came forward and was sworn in. He has heard a lot of talk on impervious surface, too much water and such problems. He wanted to know when Mayor and Council are going to make the lot sizes in town larger. Chairman Hall explained to him that the lot size of 50x150 feet was made through the Zoning Ordinance long ago and if we change that now it will make every home nonconforming and any work that wanted to be done would mean a trip to the Planning Board. Mayor and Council do have an impervious coverage Ordinance under consideration at this time. It would be very tough to create larger building lots in a town as developed as this one is. Mr. Ward felt this is an embarrassment as every new home has a pool.

As there were no other comments to be made Mr. McLaughlin made a motion to approve this application, this seconded by Mr. Violette and then by roll call vote:

Ayes: Karen Brisben (reluctantly), Eileen Laszlo, Donald Laws, Donald McLaughlin, Anne Morris, Ray Petronko, Chris Randazzo, Bret Violette, Norm Hall

Noes: None

NEW BUSINESS:

The next item on the agenda was a request for variance relief for Block 46, Lot 3, 307 Brooklyn Boulevard, owned by Eric Wasser, to allow construction of a covered front porch with second floor deck. Lot Coverage – 20% permitted, 22.18% existing, 26.33% proposed. Front Yard Setback – 40 feet required, 40.75 feet existing, 28.75 feet proposed.

The proper fees have been paid, taxes are paid to date and the property owners within 200 feet as well as the newspaper have been properly notified. Mr. Wasser, who is an attorney, came forward to represent himself and he was sworn in.

Before starting, Mr. Kennedy marked the following exhibits:

- A-1. The application, dated 11/23/2015.
- A-2. Land Use Development Checklist.
- A-3. Correspondence to the Board Secretary dated 11/24/15.
- A-4. Plot Plan dated 2/16/16.
- A-5. Architectural Plan dated 2/16/16.
- A-6. Survey dated 9/16/15, revised 1/12/16.
- A-7. Report from Peter Avakian dated 4/19/16.
- A-8. Revised denial letter dated 3/22/16.

Mr. Wasser said he purchased this property 5 years ago. This home does not have a porch and he felt it did not fit in the neighborhood and is not pleasing to him as the front façade has no dimensions. He presented two pictures, taken by him 3 weeks ago, of the home from different angles. Mr. Kennedy marked these as Exhibit A-9 & A-10. Mr. Wasser said that most homes east of the railroad have porches and his will be a two story front porch. He then presented Exhibit A-11 which was an illustrated rendering of what he is proposing, this rendering was prepared by him and his daughter on 10/15/15.

He explained he is changing the home from brick to siding and putting in a French door in the front for access to the 8 foot wide front porch. He has a bedroom on the first floor for his parents to use when they visit in the summer, this is why he put a “bump” out on the porch so they can get from the bedroom to the porch.

He acknowledged he needed three variances and he had brought one expert here to testify if need be. He said the house was built in 1958, it was sold in 1971 and was then gutted in 1996 and received all approvals for this. His goal is to make Sea Girt his permanent residence, he used to visit when he was little. Mrs. Lazslo asked him if he came up with the plan and he said he wanted a wider porch but thought that would be too big so cut it back. There was no architect, he and his daughter did this.

Mr. Randazzo asked about a slight difference here as the Zoning Officer says its 28.75 feet from the street and the plan says 28.90 feet. Mr. Wasser acknowledged there was no official count.

Mr. McLaughlin said he surveyed the area today and at least 8 homes across the street do not have porches. Mr. Wasser said he went from Third Avenue to Fourth Avenue and counted 18 homes, only 4 did not have porches. Mr. McLaughlin then asked if he had done a visual look at his proposal as this porch would substantially block his neighbors view as they all conform and all the homes on this side of the street line up. Mrs. Laszlo asked if he considered a porch without the bump-out and Mr. Wasser said yes but he wanted more room for his parents. Mr. McLaughlin then noted his application gives his address as Somerville and Mr. Wasser said that is his work

address, he commutes from Sea Girt to Somerville and uses his Somerville address for his mail.

Mr. Violette asked if he could remove any part of his home to reduce the coverage issue and Mr. Wasser said no. The back porch is covered and enclosed so it counts in building coverage. Mr. Violette said the Board has considered small encroachments for porches and asked Mr. Wasser if he could make changes to have the coverage reduced. Mr. Wasser said no, he can't remove anything on the home.

Chairman Hall commented that he purchased the home at 22% lot coverage and the answer was yes, there have been no changes. Mrs. Brisben asked about a tree in the front yard and will that be removed; Mr. Wasser said he is keeping the tree, he loves it. Mrs. Morris commented there are no sealed architect drawings and Mr. Wasser said that was correct, there are none. Mr. McLaughlin asked about the back yard coverage and referenced impervious coverage; Mr. Wasser said he has no problem with drainage and could not see what changing the rear yard coverage would do.

At this time Mr. Michael Cole came forward and was sworn in. He is the Planning Board Engineer for Somerville and the Zoning Board Planner for Middlesex, he has been licensed in New Jersey for 12 years. He told the Board this is a C-1 Hardship variance; the house is where it is, it needs a variance no matter what Mr. Wasser does. The Board has to ask if the variance will fit in and does it impair the Zone Plan. Mr. Randazzo felt his reading of the Statute considers a hardship due to topographic conditions; he wanted to know how this application will apply to that. Mr. Cole said the house is on a certain setback and that is a hardship. Mr. McLaughlin then asked him if every home in that area has a C-1 hardship? Mr. Cole said no, he meets the setback and the porch can't be put in due to that. Mr. Cole said the comment that this will block the neighbors' view has to be weighed against the sightline. He did not think it is a detriment; the enhancement to the home will be better and he did not feel that the 8 feet will be noticed.

Mrs. Brisben asked Mr. Wasser if he was willing to have it stipulated that he keep the porch open and never enclose it and the answer was yes. He also offered wording that will save the trees around the porch area.

As there were no further questions from the Board the hearing was opened to the public for questions. Mr. John Ward came forward and asked if the neighbors were notified; the answer was yes.

As there were no other questions, that portion of the hearing was closed and the Board went into discussion. Mrs. Brisben noted the homes on this side of the street all line up and are straight across, she felt this will stick out. But if it is kept open and all the trees are saved, she would approve it as no neighbors came out to protest. Mr. McLaughlin said he would be against this, there are no licensed architectural plans and

he didn't think the front yard setback line would fit in. Mr. Petronko said, except for one other property, this is closest to the Borough right-of-way. He was against this application but had sympathy for Mr. Wasser; however, he did not think this was a good idea and would change the plane of the whole street.

Mrs. Morris was in agreement with Mr. McLaughlin and Mr. Petronko and felt that a front setback of only 28.9 feet would negatively impact the character of the lot. Many people want front porches but can't go that far forward; also, 26.3% coverage is a lot and going forward with the porch that much does not give her a reason to approve this. Mr. Violette agreed with the last 3 Board members, there will be more impervious coverage as well as going 12 feet into the setback. He agreed it will enhance the home but older homes in town are at the proper setback and he could not say yes to this.

Mr. Randazzo did not think this meets the C-1 hardship criteria, maybe meets a C-2; this will be closer to the street. This already is a bigger home and, if Mr. Wasser wants, he can move the home back. There is more lot coverage now and Mr. Wasser is asking for more, it will change the character of the street. Mr. Laws said he also was not in favor of it and he felt that other things can be done rather bump out towards the street. Mrs. Laszlo said she is a front porch fan but this was a difficult issue and she was torn.

Chairman Hall felt there are ways to extend the setback area in the front and told Mr. Wasser it was obvious he will be denied. He explained that if the Board finalizes this application this evening Mr. Wasser will have to start all over again; if he wants to, he can go back and change his plan and return. Mr. Wasser asked if he changed the concept to a straight line would that work and Mr. Kennedy said the Board does not go into conceptual plans. Chairman Hall told him to keep in mind that his home will stand out, the Board likes to see homes that do not stand out. He can have a patio in his front yard instead of a porch and can come back for approval for that; the summary is that if he wants to amend his application he can come back.

Mr. Petronko suggested he think about form and function here, if he has French doors he cannot put chairs there but he wants an area to sit. He told Mr. Wasser to perhaps drive around town and maybe he will see something. Mr. Wasser said he already has done that. Chairman Hall felt that the lot coverage issue may be a big obstacle. Mr. Violette said that being over 20% already and then going into the 40 foot front yard setback becomes a really serious proposal. Chairman Hall explained that they do not want him to not be able to make his home better, but the Board has a job to do and that is to follow the Master Plan. Mr. Wasser asked for a few minutes to discuss this with his Planner, he then came back and said he would like to have this application carried.

Mr. Kennedy said they can extend the time frame for approval and he would adjourn this hearing to the August meeting of the Board and give a time to October for final approval. He would only need to re-notice if he makes substantial changes.

OTHER BUSINESS:

The Board then turned to a discussion of a request from Christopher Dowicz regarding his Resolution of approval for his variance hearing from November, 2015 where he asked for changes to be made. Mrs. Brisben explained to the Board that he had 90 days to apply for permits and did not, he is now asking for more allowances and Jim Quigley, our Zoning Officer, is totally against any changes being made. He felt that the Board was more than fair with Mr. Dowicz in giving him the extra time to get his paperwork in order and allowing him to keep his shed, instead of a garage. Mr. Dowicz has not kept up the requirements in the final Resolution and Mr. Quigley felt it was now time for the Zoning Office to take legal action.

Mr. Kennedy said that he received an email from Mr. Dowicz telling him that he is an attorney and Celeste Miller is not representing him for this part. The Board went into a discussion on what was approved back in 2015 and Mrs. Morris commented this application has been going on since 2014. Mr. Kennedy felt the conditions that were put in this Resolution were unique as the Board gave him relief until he sells or the shed is demolished. Mr. Randazzo felt the Board went out of their way to accommodate him as his garage was demolished by Hurricane Sandy, but "that ship has now sailed" as he was told to get permits & a concrete base.

Mr. Kennedy said that Mr. Dowicz wants a change in the Resolution and Mr. Quigley does not. We can't do the Zoning Officer's work for him; we have to let him know if we are going to allow changes to the Resolution or not. Mr. Violette felt we granted him a delay already, he can't change the shed to conform and felt it's almost as costly to have this 120 square foot shed as it is to have a garage. Chairman Hall asked if the Board has the power to change a Resolution and Mr. Kennedy said yes; however, he did feel this issue was fully debated at the original hearing and discussed in detail by the Board. Chairman Hall felt the Board should back up the Zoning Officer and not change the Resolution, a lot of work went into this application and the Board made a decision.

The rest of the Board members agreed; a motion was then made by Mrs. Morris, seconded by Mr. McLaughlin, to not change the original Resolution and let Mr. Quigley take over this matter, this done by the following roll call vote:

Ayes: Karen Brisben, Eileen Laszlo, Donald Laws, Donald McLaughlin, Anne Morris, Ray Petronko, Chris Randazzo, Bret Violette, Norm Hall

Noes: None

Mrs. Brisben asked Mr. Kennedy to write to Mr. Dowicz as he has been dealing with him on this issue and Mr. Kennedy said he would.

The last item to be discussed was an Ordinance that had been introduced by Mayor and Council and sent over to the Planning Board for any final comments, Ordinance 22:16, Chapter 17. One of the issues was the impervious soil conditions and rules. Mrs. Morris explained that if existing homes want to make changes that violate the items outlined in this Ordinance they would have to come before this Board. Chairman Hall did not agree and said that if the average home is at 50% impervious coverage then every home would be nonconforming. He wanted to see less applications and not more; he would like to have the Engineer come up with a plan for this, the Board said a few month ago that runoff should be directed to the street or have it naturally discharge; he felt this Ordinance needed more work.

Mr. Violette said he went through this when he built his home, it was designed with 3 tanks and not just one. Every gallon that is put in should reduce impervious surface coverage; you can have someone with 35% coverage and have water pouring into the street. Mrs. Morris said Peter Avakian has been involved and his recommendation was 30% impervious coverage but the Council decided on 35%; they also reached a fair conclusion on pools with coping on all 4 sides. She said Council has been working on this for the last 7 months, it is not something that is being thrown out here. This needs to be passed, pools are being put in and variances needed, pavers are being put around pools that create impervious surface.

After more discussion on what is included in impervious coverage, Mr. Violette said if the math works, then he is for approval. Chairman Hall said all he wants is for people to be able to do things other than a hard set coverage percentage. Mr. McLaughlin asked Mr. Kennedy what is Council asking the Planning Board and Mr. Kennedy explained the Ordinance has been introduced and it is now forwarded to the Planning Board for comments; Council can accept our comments but they are not binding. Chairman Hall felt the Board comments do have an impact but Mr. Kennedy agreed they do but it's up to Council to make the final decision.

After more discussion, Mrs. Morris said the public hearing on this will be June 8th. Mr. McLaughlin wanted to know if a representative of the Board should be there but Chairman Hall said we are doing this through our suggestions, if any. Mr. Violette felt there is no harm in approving the passing of it, it can be modified in the future; Mr. McLaughlin agreed and suggesting in reviewing it in one year.

Chairman Hall also commented on the wording to mandate the State rule of a 4 foot fence around a pool and Mrs. Morris agreed and will verify that this include complying with the State Code. Mr. Violette asked if all 4 foot fences around a pool come before the Board and Mrs. Brisben said no, only if the fence is within the side yard setback. If a pool is put in the middle of the back yard within the side line setbacks

there is no issue. Mr. Violette then felt the wording in the proposed Ordinance is worded okay.

It was decided to approve the Ordinance, as written, and take a look at it in the future to see if it is working. A motion to approve the Ordinance, as presented, was then made by Mr. McLaughlin, seconded by Mr. Laws and unanimously approved, all ayes.

Mrs. Brisben reminded all that the meeting in June will be held on June 29th as the third week of the month is graduation week and the school is not available.

As there was no further business to come before the Board, a motion to adjourn was made by Mr. McLaughlin, seconded by Mr. Violette and unanimously approved, all aye. The meeting was adjourned at 9:12 p.m.

Wednesday, May 18, 2016