

Wednesday, October 18, 2023

SEA GIRT PLANNING/ZONING BOARD  
REGULAR MEETING  
WEDNESDAY, OCTOBER 18, 2023

The Regular Meeting of the Sea Girt Planning/Zoning Board was held on Wednesday, October 18, 2023 at 7:00 p.m. online and live at the Sea Girt Elementary School.

In compliance with the Open Public Meetings Act, notice of this Body's meeting had been sent to the official newspapers of the Board and the Borough Clerk, fixing the time and place of all hearings.

Kevin Kennedy, Board Attorney was present and both Chris Willms, Zoning Officer, and Peter Avakian, Board Engineer, were absent; Board Secretary Karen Brisben recorded the Minutes.

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

Present: Councilwoman Diane Anthony, Karen Brisben, Tom Britt, Jake Casey, Stan Koreyva, Eileen Laszlo, John Ward, Norman Hall

Absent: Carla Abrahamson, Mayor Don Fetzer, Robert Walker

**CORRESPONDENCE:**

The Board had received a copy of a notice to the DEP regarding the proposed ocean wind turbines, this distributed for the Board's information only and there is no action to be taken.

Chairman Hall asked if there was anyone who had any public comments or questions to ask and there was no response. Councilwoman Anthony wanted to thank Mrs. Brisben for going to the online meetings on these wind turbines and keeping the Board up to date on this. Mr. Casey had a question on the notice and noted small round circles on the ocean plan shown and wanted to know what they represented. The attorney in the audience for the applicant felt they showed the depth of the ocean in these areas.

**APPROVAL OF MINUTES:**

The Minutes of the Wednesday, September 20, 2023 meeting was approved on a motion by Mr. Ward, seconded by Mr. Casey and unanimously approved, all aye.

**OLD BUSINESS:**

The Board turned to the approval of a Resolution for Block 8, Lot 6, 812 First Avenue, owned by David & Klinda DeStefano, to allow outside structures. Mr. Kennedy

explained that this is a unique Resolution with three separate votes taken on different aspects of the application but only one vote on the Resolution is needed; if someone voted no on a part of the application they cannot vote on the approval of the Resolution, only those that voted on all three aspects are eligible to vote. Mr. Kennedy then went over some comments that Mr. Ward had made on impervious lot coverage and that wording will be changed; there was also a concern with comments on the pool so Mr. Kennedy confirmed what should be said with Mr. Willms and then the following final Resolution was presented for approval:

**WHEREAS**, David and Linda DeStefano have made Application to the Sea Girt Planning Board for the property designated as Block 8, Lot 6, commonly known as 812 First 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 install several improvements to an existing single-family home; and

#### **PUBLIC HEARING**

**WHEREAS**, the Board held a Public Hearing on September 20, 2023, 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:

- *Development Application Package, introduced into Evidence as A-1;*
- *Plot Plan, prepared by MCH Engineering, Inc., dated January 3, 2023, last revised May 3, 2023, introduced into Evidence as A-2;*
- *Architectural Plans, prepared by the Lederer & Wright Partnership, dated May 4, 2023, introduced into Evidence as A-3;*
- *Topographic Survey, prepared by Lakeland Surveying, dated February 12, 2021, last revised December 6, 2021, introduced into Evidence as A-4;*

Wednesday, October 18, 2023

- *Leon S. Avakian, Inc. Review Memorandum, dated June 9, 2023, introduced into Evidence as A-5;*
- *Resolution of the Sea Girt Planning Board, regarding the subject property, adopted on or about April 15, 1993, introduced into Evidence as A-6;*
- *Communication from Michael Rubino, Esq., to the Sea Girt Planning Board, dated August 23, 2023, introduced into Evidence as A-7;*
- *Leon S. Avakian, Inc. Review Memorandum, dated September 11, 2023, introduced into Evidence as A-8;*
- *Picture-board, containing 10 photographs of the subject property (including an aerial photograph), taken by Michael Rubino, Esq. and David DeStafano, introduced into Evidence as A-9;*
- *A hand-out, describing the subject property as it previously existed, as it currently exists, including a proposed rendering, introduced into Evidence as A-10;*
- *Picture-board with Plot Plan details, including Preliminary Landscaping Plan, prepared by Land Design Inc., dated April 17, 2023, introduced into Evidence as A-11;*
- *Variance Construction Sheet, prepared by The Lederer & Wright Partnership, dated June 26, 2022 (Sheets 2, 3, 10, 12, and 13), introduced into Evidence as A-12;*
- *Zoning Officer Denial Letter, dated January 27, 2023, introduced into Evidence as A-13;*
- *Affidavit of Service; and*
- *Affidavit of Publication.*

**WITNESSES**

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

- David DeStefano, Applicant;
- Ryan Clayton, Landscape Architect;
- Matthew Hockenbury, Professional Engineer / Professional Planner;
- Michael J. Rubino, Jr., Esq., appearing;

**WHEREAS**, Chris Willms, Zoning Officer / Code Enforcement Officer was also sworn with regard to any testimony / information he would provide in connection with the subject Application; 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 2016 (although the property has been in the Applicants' family for a number of decades).
- A single-family home currently exists at the site.
- The Applicant's utilize the existing structure as a Summer home.
- As indicated, the Applicants herein acquired the ownership interest in the subject property in or about 2016.
- Since acquiring an ownership interest, the Applicants have effectuated a number of improvements to the home / site.
- The previously completed improvements include the following:
  - The general rundown nature of the home was improved / renovated;
  - Overgrown shrubbery was replaced / replanted;
  - Plumbing improvements were effectuated;
  - Existing leaks were addressed / repaired;
  - New electrical improvements were installed;
  - New HVAC improvements were installed;
  - Flood vents were installed (where none had previously existed); and

- The home was improved so as to satisfy Prevailing FEMA Requirements.
- The aforesaid improvements did not require any Variance approval.
- The Applicants obtained necessary Permits for the aforesaid work which was completed.
- The Applicants are not proposing to effectuate additional improvements to the Lot/site.
- The proposed improvements include the following:
  - a. Construction of a patio with kitchen area;
  - b. Construction of a shade structure;
  - c. Installation of a swimming pool; and
  - d. Installation of a fence.
- Details pertaining to the proposed improvements include the following:

#### PATIO WITH KITCHEN AREA

Location:	Portion of property off of Morven Terrace (per Plans)
Size:	Per Plans
Height:	Per Plans

#### SHADE STRUCTURE

Location:	Portion of property off of Morven Terrace (per Plans)
Size:	10' X 12'
Covered / Uncovered?:	The proposed shade structure will be covered.

#### SWIMMING POOL

Type of swimming pool:	The water structure will have a hot tub type of appearance.
Location:	Southern side of property (per Plans)

Above ground / below ground:	The proposed pool will be above ground.
Elevation:	The proposed pool will be installed at ground level.
Size:	7.3' X 7.3'
Depth:	3' depth
Features:	a. The swimming pool will be covered and locked.  b. There will be seats built into the pool;  c. There will be no permanent foundation.

### FENCE

Location:	Along the Morven Terrace street line (per Plans)
Type of fence:	Open picket-style fence
Height:	4'

- The Applicants anticipate having the aforesaid improvements installed in the very near future.
- The Applicant will be utilizing Licensed Contractors in connection with the installation / construction process.

### VARIANCES

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

*POOL LOCATION: The Prevailing Zoning Regulations only allow a pool to be located in a rear yard area; whereas, in the within situation, the proposed pool is located in a technical front yard area;*

*POOL SETBACK: 10 ft. required; whereas 5 ft. proposed;*

*FENCE HEIGHT: 3 ft. maximum allowed; whereas 4 ft. proposed;*

*ACCESSORY PATIO LOCATION: The Prevailing Zoning Regulations do not permit a patio to be constructed in a front yard area; whereas, in the within situation, the Applicants are proposing to install a patio in a technical front yard area, off of Morven Terrace;*

### **DESIGN WAIVER**

**WHEREAS**, the Application as submitted, and/ or amended, requires approval for the following Design Waiver:

*CHANGE OF GRADE: Pursuant to the Prevailing Zoning Regulations, there shall be no alteration of the existing natural configuration and elevation of any land or Lot without the permission of the Borough Engineer. Additionally, permission shall only be granted to the extent absolutely necessary to render the premises suitable for such permitted use. Moreover, the testimony and evidence indicated that the Borough Engineer will not approve, absent Board approval, any grade change exceeding 1 ft. In the within situation, the Applicants propose an change in grade ranging between 1' and 2' and, as such, a Design Waiver is required.*

### **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, as amended is hereby **granted / approved with conditions**.

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

1. The Sea Girt Planning Board has proper jurisdiction to hear the within matter.
2. The subject property is located at 812 First Avenue, Sea Girt, New Jersey, within the Borough's District 1, East Single-Family Zone.
3. The subject property contains an existing single-family home.

4. Single-family use is a permitted use in the subject Zone.
5. The Applicant proposes to effectuate a number of improvements to the site.
6. The Applicants' proposed improvements include the following:
  - The general rundown nature of the home was improved / renovated;
  - Overgrown shrubbery was replaced / replanted;
  - Plumbing improvements were effectuated;
  - Existing leaks were addressed / repaired;
  - New electrical improvements were installed;
  - New HVAC improvements were installed;
  - Flood vents were installed (where none had previously existed); and
  - The home was improved so as to satisfy Prevailing FEMA Requirements.
7. Such a proposal requires Bulk Variance approval.
8. The Sea Girt Planning Board is statutorily authorized to grant such relief and therefore, the matter is properly before the said entity.
9. With regard to the Application, and the requested relief, the Board notes the following:
  - The existing single-family use at the site is permitted in the Zone.
  - The Applicants have already effectuated a number of significant zoning-compliant improvements to the home / property.
  - The previously effectuated improvements significantly upgraded the overall aesthetic appeal of the property.
  - The Board appreciates the Applicants' commitment to the subject property and, by extension, their commitment to the Borough of Sea Girt.



- The previously effectuated improvements at the site converted the property from a non-FEMA compliant property to a FEMA-compliant property, which is beneficial for the property and the community.
- Per the testimony and evidence presented, the prior improvements at the site included the installation of a re-charge system, even though the same was not required. The Board appreciates the Applicants' efforts in the said regard.
- Prior improvements at the site also resulted in grading / drainage improvements as well.
- The Applicants' prior improvements converted the site from non-conforming (in terms of Impervious Coverage) to conforming (in terms of Impervious Coverage).
- As a result of the Applicants' prior improvements, the property now has a conforming 38% Impervious Lot Coverage.
- During the Public Hearing process, a question was raised as to whether the within Application required approval for a Building Coverage Variance.
- In or about 1993, prior Owners (relatives of the Applicants herein) received Variance Approval for renovations at the site. (See A-6).
- In 1993, the then Applicants received Variance Approval for a Building Coverage of 22.39%.
- Per the testimony and evidence presented, the existing Building Coverage at the site is now 22.43%. (It is unclear how the said coverage was increased from 22.39% to 22.43%.)
- The Applicants herein (in conjunction with the within Application) are proposing to reduce the overall Building Coverage at the site from 22.43% to 22.33%.
- The Prevailing Zoning Regulations allow a maximum Building Coverage of only 20%.
- Although the Applicants' reduced Building Coverage (22.33%) exceeds the 20% maximum Building Coverage otherwise allowed, the Board recognizes that a Building Coverage Variance was previously granted for the property (22.39%).
- Thus, the Applicants' reduced Building Coverage of 22.33% is less than the previously granted Building Coverage Variance of 22.39%.

- In that the Building Coverage associated with the within Application is less than the previously granted Variance amount, the Board finds that in the within situation, no Building Coverage Variance is required.
- The review letters associated with the subject Application also raised the question as to whether the Applicants were proposing a hot tub, a portable swimming pool, a swimming pool, or some other type of water structure.
- The issue is particularly important as there are different regulations depending on how the proposed water structure is officially classified. (That is, there are restrictions on the location as to where certain types of water structures can be placed, where the same are not permitted, what setbacks are required, and whether variance relief is required.)
- Upon information and belief, there are no restrictions as to where a portable pool can be located onsite.
- Per Prevailing Ordinances, a swimming pool can only be located in a rear yard area.
- The matter is further complicated in that the Borough of Sea Girt does not appear to have a definition for a "hot tub."
- The Applicants' proposed water structure is 7.3' X 7.3' (3' deep).
- Though the Applicants' representatives had initially / officially noticed for an interpretation on the issue (i.e. whether the proposed water structure was a hot tub, a portable pool, a swimming pool, or some other classified structure), the said request was officially withdrawn at the September 20, 2023 Public Hearing.
- For record-keeping purposes, the Board notes that Ordinance Section 17-2 defines a "portable pool" as follows:
  - *...(the same) ...shall mean those pools which are not otherwise permanently installed, do not require water filtration, circulation, and purification, do not exceed 2 ft. of water depth, and do not exceed a water surface area of 120 SF.*
- Ordinance Section 17-2 defines private residential swimming pools as follows:

- *...(the same) shall mean swimming pools or tanks, plastic or otherwise, placed upon residential premises.*
- The Board Engineer Review Memorandum, dated September 11, 2023 (A-8) indicates that the Applicants' proposed water structure is a swimming pool.
- Upon further review, the Applicants' representatives publicly agreed that the proposed water structure is, in fact, a swimming pool, per the Ordinance definitions.
- As a swimming pool, the Applicants' proposal requires Variance relief for the location of the pool, and the setback of the pool.
- Notwithstanding the Applicants withdrawal of the interpretation request, the Board does note certain complications associated with the issue of determining whether a proposed water structure is a hot tub, a portable pool, a swimming pool, or something else. As such, the Board will presumably consider more formally discussing the issue at its Annual Meeting, so as to determine if the issue should be presented to the Borough Council for further review / evaluation.
- Per the testimony and evidence presented, and per the definitions referenced, the Applicants' proposed water structure is a swimming pool. That notwithstanding, the Board does recognize that because of the size of the same, the depth of the same, and the nature of the same, the subject water structure has the general appearance of a hot tub.
- Per the testimony and evidence presented, there are other similar water structures along the Morven Terrace street-front.
- The Applicants' proposed water improvement is compatible with other water improvements along the Morven Terrace roadway.
- The Applicants' proposed swimming pool will be at ground level, and given existing changes of grade at the site, the same should not be readily visible from the public street.
- Additionally, the proposed swimming pool will be shielded with a 4' fence and other landscaping / shrubbery, thus, the same should not be readily visible from the Morven Terrace street front.
- There is an approximate 5' change of grade on the subject property (between the Morven Terrace portion of the property and the First Avenue portion of the property), and, as such, the proposed pool will

not be readily visible from the Street, helping to further justify the Variance relief.

- Per the testimony and evidence presented, and per prevailing Building/Construction Code regulations, the pool is required to be setback a minimum of 2' from a structure, or other distance specifically referenced in the pool manufacturer's guidelines.
- In the within situation, the Applicants will have a pool structure setback of 5', which will comply with the minimum setback requirements (unless manufacturing guidelines require otherwise).
- Per the testimony and evidence presented, there will be no known health / safety violations associated with the pool setback approved herein (providing manufacturing guidelines do not require a setback greater than 5'). (As a condition of the within approval, the Applicants' representatives shall be required to prove that the pool's manufacturing guidelines do not suggest / recommend a setback of greater than 5'.)
- During the Public Hearing process, there was an extensive debate as to whether the pool should be slightly relocated. Upon further review and after good-faith debate and discussion, a majority of the Board has determined that no such pool relocation is necessary.
- The Board recognizes that the subject property is uniquely located.
- The subject property is, essentially, located on a thru Lot. That is, a portion of the property has frontage along Morven Terrace; while the other portion of the property has frontage along First Avenue.
- With the 2 Street frontages, as aforesaid, there are, essentially 2 technical front yard areas on the property.
- The existence of the 2 technical front yard areas complicates the ability of the Applicants to satisfy all Prevailing Bulk Zoning Requirements.
- If the subject property had a traditional front yard and a traditional rear yard, most of the requested Variances would not be necessary.
- The Applicants' representatives testified that the Applicants treat the Morven Terrace portion of the property as a functional rear yard area – which is why the said location has been chosen for a number of the proposed improvements.

- The unique Lot, and the geographical limitations / constrictions associated therewith, clearly restrict the nature / lay-out / orientation of any proposed improvements in the functional rear yard area at the site.
- Under the circumstances, the unique Lot (and geographical constrictions / limitations associated therewith) constitute a hardship.
- The unique Lot (and geographical constrictions / limitations associated therewith) materially limit the ability of the Applicants to satisfy all Prevailing Bulk Standards (for the placement of the proposed improvements).
- Because of the approximate 5' change of grading on the property (between the Morven Terrace portion and the First Avenue portion), the patio / pool will not be readily visible from the street.
- Per the testimony and evidence presented, the location for the proposed improvements is located in the Applicants' functional rear yard area (although technically the same constitutes a second front yard area).
- Per the testimony and evidence presented, 10 surrounding properties appear to use First Avenue as a front yard area as well, and furthermore appear to use the eastern side of the property (i.e. Morven Terrace) as a rear yard area.
- The location of the proposed improvements will not be substantially different from other similarly situated thru Lots in the immediate area.
- The proposed improvements (patio / pool) are not located in immediate proximity to a neighboring home. Rather, the Applicants' proposed improvements are located in close proximity to a neighboring garage. The fact that the proposed improvements are not necessarily close to neighboring living space further help justify the requested Variance relief.
- The Applicants' proposed improvements will enhance the overall aesthetics along the Morven Terrace street-front.
- The Applicants' have existing landscaping at the site, which will be supplemented to include evergreens and deciduous shrubs which, upon installation, will be 7'-8' tall and, upon maturity, will have a height of 12'-14'. The existence of the said landscaping shall help shield neighboring property owners from the improvements authorized herein.

- Additionally, as a condition of the within approval, the Applicants are required to perpetually maintain, replace, and replant the landscaping, so that the same will serve as a perpetual buffer between the improvements and neighboring properties.
- The existing and proposed fencing and shrubbery will minimize any adverse impact otherwise associated with the Applicants' proposed improvements.
- The installation of the proposed improvements, in the proposed location, will be consistent with the character of residential development on other lots in the Morven Terrance / First Avenue area.
- Per the testimony and evidence presented, the Applicants require Design Waiver relief for the Change of Grade at the site. Specifically, per Prevailing Zoning Regulations, any Change of Grade must be approved by the Borough Engineer, and no Change of Grade exceeding 1 ft. will be permitted, absent approval of the Sea Girt Planning Board. In the within situation, the Applicants propose an increase in the grade ranging from 1 ft. to 2 ft. and, as such, Design Waiver relief is required.
- Per the testimony and evidence presented, the Applicants' already effectuated improvements at the site included the installation of a recharge system.
- Moreover, per the testimony and evidence presented, there is no adverse grading / drainage impacts associated with the within Application.
- Moreover, as an express condition of the within approval, the grading / drainage / change of elevation details shall be furthermore officially reviewed/confirmed and approved by the Board Engineer and the Zoning Officer.
- The Application as presented requires a Variance for Fence Height in a front yard area. Specifically, a 3 ft. maximum height is allowed; whereas a 4 ft. height is otherwise proposed.
- The Board notes that the installation of a swimming pool at the site will likely require, per Prevailing Building / Construction Code Regulations, a 4 ft. high fence.
- The Board notes that the Applicants' 4 ft. high fence proposed herein will, in fact, surround a swimming pool.

- The Board notes that the 4' high fence approved herein satisfies Prevailing Building / Construction Code Requirements (relative to the installation of a pool).
- The Board notes that the 4' high fence approved herein will be located in a functional rear yard area (albeit a technical front yard area).
- The Board also notes that a 4' high fence in a rear yard area would technically be permitted.
- Per the testimony and evidence presented, there are other 4' high fences in technical rear yards in the Morven Terrace / First Avenue neighborhood.
- The Board Members intensely reviewed the proposal, and the impacts of the same.
- Some Board Members were supportive of all elements of the proposal. Some Board Members were opposed to certain portions of the Application, and / or impacts associated therewith.
- Some concerns expressed by various Board Members include the following:
  - a. There was a concern about the number of existing non-conforming conditions at the site, and the number of proposed Variances associated with the Application;
  - b. There was a concern that there were simply too many improvements proposed for the Applicants' parcel;
  - c. There was a concern that if all the proposed improvements were installed, the subject property would be overbuilt;
  - d. There was a concern about health and safety issues associated with a pool being located too close to a structure;
  - e. There was a concern that as proposed, the Applicants' rear yard area would just be too crowded;
  - f. There was a concern that with the nature / extent of the proposed improvements, and the non-conforming nature of the same, the Applicants were impermissibly "pushing the envelope" relative to existing zoning restrictions;

- g. There was a concern that the location of the pool is too close to the neighboring property and, as such, the same should be relocated;
  - h. There was a concern that the additional landscaping at the site would not serve as a sufficient sound barrier to the non-conforming location of the Applicants' proposed improvements; and
  - i. There was a concern that the non-conforming location of the pool (relative to other structures) would constitute an attractive nuisance, exposing potential users to damage / injury.
- The Board Members intensely discussed the aforesaid concerns, and potential ways to address the same.
- After extensive good-faith debate and analysis, for the reasons set forth herein, a majority of the Board has determined to conditionally approve the Application.
- Additionally, in conjunction with the above-referenced concerns, a majority of the Board finds that a number of Variances is not necessarily the issue – rather, the issue is the impact such Variance relief will have on the surrounding community.
- In conjunction with the above point, a majority of the Board finds that subject to the conditions set forth herein, approval of the within Application will not adversely affect the surrounding communities.
- There were no known public objections associated with the Application.
- The location of the proposed improvements are practical, logical, and appropriate.
- 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 subject site can physically accommodate the improvements approved herein.
- The Board also notes that the subject lot is 7,500 SF, which conforms with Prevailing Requirements.



- Per the testimony and evidence presented, there is a need/desire for the proposed improvements.
- The Board is aware that the subject property has a fairly unique condition in that the subject property has frontage along two roads, namely First Avenue, and Morven Place.
- The two frontages for the property, as aforesaid, complicate the ability of the Applicant to satisfy all prevailing bulk requirements.
- The two frontages for the property, as aforesaid, hinder the ability to place all of the proposed improvements in conforming locations.
- The Applicant's site / lot can physically accommodate the improvements proposed / approved herein.
- Subject to the conditions set forth 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 lot more functional, and approval will also improve the quality of life for the homeowner.
- Subject to the conditions contained herein, the improvements authorized herein will not over-power / over-whelm the subject Lot.
- Upon completion, the improvements approved herein will not over-power the Lot.
- The improvements 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.
- Sufficiently detailed testimony / plans were presented to the Board.
- The proposed improvements / renovations should nicely complement the property and the neighborhood.
- The Applicants' plan is well designed and reasonable.
- 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 improvements approved herein will not be inconsistent with the architectural character of other improvements located on other single-family Lots 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 improvements 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, a majority of the Board is of the opinion that the requested relief can be granted without causing substantial detriment to the public good.

### **CONDITIONS**

During the course of the Hearing, the Board has requested, and the Applicants 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 Applicants shall comply with the terms and conditions of the Leon S. Avakian, Inc. Review Memorandum, dated June 9, 2023 (A-5) and September 11, 2023 (A-8).

- c. The Applicants shall comply with any Affordable Housing Contributions / Directives/Requirements 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.
- d. The Applicants shall cause the Plans to be revised so as to portray and confirm the following:
  - The inclusion of a note confirming that the pool shall be hidden / shielded from the Morven Terrace frontage;
  - The inclusion of a note confirming that additional landscaping shall be placed behind the fence (the details of which shall be reviewed and approved by the Board Engineer and the Zoning Officer);
  - The inclusion of a note confirming that there shall be no interference with any Site Triangle Easements at the site;
  - The inclusion of a note confirming that the drainage for the drywell system shall be piped from the roof (the details of which shall be reviewed and approved by the Board Engineer);
  - The inclusion of a note confirming that the overhang for the shade structure shall be no more than 12 inches; and
  - The inclusion of a note confirming that the pool setback shall not violate the pool manufacturing recommended guidelines. (Confirming proof shall be submitted to the Board Engineer and Zoning Officer.).
- e. The Zoning Officer and the Board Engineer shall confirm Building/Lot Coverage calculations at the site (so as to confirm the same are consistent with the Plans and consistent with the testimony presented during the Public Hearing).
- f. The Zoning Officer and the Board Engineer shall confirm the change of grading details / calculations, so as to confirm the absence of any adverse grading / drainage issues otherwise associated with the subject proposal.
- g. The grading / drainage details shall be reviewed and approved by the Board Engineer.

- h. The Applicants shall install a pool fence, in accordance with Prevailing Building / Construction Code Requirements.
- i. The Applicants shall perpetually maintain, replace, and replant the landscaping at the site.
- j. The Applicants shall obtain a Flood Hazard Certificate, if necessary, so as to confirm that the proposed development is outside of a Flood area.
- k. The Applicants shall obtain any necessary Permits as the Borough of Sea Girt may require.
- l. The Applicants shall submit soil boring logs with the elevation of the seasonal high water table and the permeability of the soil. The said information shall be specifically reviewed and approved by the Board Engineer.
- m. The Applicants shall comply with any Prevailing FEMA / Flood Regulations.
- n. 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.
- o. The Applicants shall manage stormwater run-off during and after installation / development (in addition to any other prevailing / applicable requirements / obligations.)
- p. 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
- q. If applicable, the proposed improvement shall comply with applicable Provisions of the Americans with Disabilities Act.
- r. The proposed structure shall comply with the Borough's Prevailing Height Regulations.
- s. 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.

- t. 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.
- u. The Applicants 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. (To the extent the Application materially changes as a result of such outside approvals, the Applicants shall be required to reposition the Planning Board for further relief.)
- v. The Applicants shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.
- w. If required by the Board / Borough Engineer, the Applicants shall submit appropriate performance guarantees in favor of the Borough of Sea Girt.
- x. 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 Building Permits for the construction / development approved herein.
- y. **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 Applicants are 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 Applicants and their representatives are not permitted to unilaterally deviate or build beyond the scope of the Board Approval. Thus, for instance, if the Board grants an Application for an existing building / structure to remain, the same cannot be unilaterally demolished (without formal Borough / Board consent), regardless of the many fine construction reasons which may exist for doing so. That is, the bases for the Board's decision to grant Zoning relief may be impacted by the aforesaid change of conditions. As a**

**result, Applicants and their representatives are not to assume that post-approval deviations can be effectuated. To the contrary, post-approval deviations can and will cause problems. Specifically, any post-approval unilateral action, inconsistent with the testimony / plans presented / approved, which does not have advanced Borough / Board approval, and will compromise the Applicants' approval, will compromise the Applicants' building process, will create uncertainty, will create stress, will delay construction, will potentially void the Board Approval, and the same will result in the Applicants incurring additional legal / engineering / architectural costs. The 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, the Applicants are to be mindful that the Applicants are ultimately responsible for the actions of the Applicants, their Agents, their representatives, their employees, their contractors, their engineers, their architects, their builders, their lawyers, and other 3<sup>rd</sup> parties.**

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

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

**BE IT FURTHER RESOLVED,** that the granting of the within Application is expressly made subject to and dependent upon the 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

Wednesday, October 18, 2023

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.

**MOTION TO APPROVE THE VARIANCE FOR THE LOCATION OF THE SWIMMING POOL, AS REFERECED ON THE PLANS.**

Motion made by: Eileen Laszlo

Second to Motion made by: Carla Abrahamson

FOR THE APPROVAL: Carla Abrahamson, Councilwoman Diane Anthony, Karen Brisben, Jake Casey, Eileen Laszlo, Robert Walker, Norman Hall

AGAINST THE APPROVAL: Mayor Don Fetzer, John Ward

ABSTENTIONS: None

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

**MOTION CONFIRMING THAT , UNDER THE CIRCUMSTANCES, NO BUILDING COVERAGE VARIANCE IS REQUIRED IN CONNECTION WITH THE SUBJECT APPLICATION.**

Motion made by: Mayor Don Fetzer

Second to Motion made by: John Ward

FOR THE MOTION: Carla Abrahamson, Councilwoman Diane Anthony, Karen Brisben, Jake Casey, Mayor Don Fetzer, Eileen Laszlo, Robert Walker, John Ward, Norm Hall

AGAINST THE MOTION: None

ABSTENTIONS: None

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

**MOTION TO GRANT THE REMAINING VARIANCE RELIEF / DESIGN WAIVER RELIEF FOR THE PROPOSED IMPROVEMENTS.**

Motion made by: Robert Walker

Wednesday, October 18, 2023

Second to Motion made by: Eileen Laszlo

FOR THE MOTION: Carla Abrahamson, Councilwoman Diane Anthony, Karen Brisben, Mayor Don Fetzer, Eileen Laszlo, Robert Walker, Norman Hall

AGAINST THE MOTION: Jake Casey, John Ward

ABSTENTIONS: None

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

## **RESOLUTION**

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

AYES: Councilwoman Diane Anthony, Karen Brisben, Tom Britt, Stan Koreyva, Eileen Laszlo, Norman Hall

NOES: None

ABSTAINED: None

INELIGIBLE TO VOTE: Jake Casey, John Ward

ABSENT: Carla Abrahamson, Mayor Don Fetzer, Robert Walker

## **NEW BUSINESS:**

The Board then turned to the only application for the evening for variance relief for Block 7, Lot 5.02, 712 Morven Terrace, owned by Norman Hobbie, to allow construction of a new dwelling with an integrated garage and second story deck. Integrated Garage – shall be set back from the building line of the principal dwelling by a minimum of 5 feet, 1.5 feet proposed.

The correct fees were paid, taxes are paid to date and the property owners within 200 feet as well as the newspaper were properly notified. Mr. Kennedy asked if anyone who had received a notice had any questions or problem with the notice and there was no response so the Board proceeded with the application.

Mr. Kennedy marked the following exhibits into the record:

A-1. A copy of the application.

A-2. A plot plan consisting of 2 sheets prepared by Charles E. Lindstrom of Lindstrom Diessner & Car, dated June 7, 2023 with no revisions.



A-3. An architectural plan consisting of 9 sheets prepared by Paul Grabowski of Virtuoso Architecture, dated June 23, 2023 with no revisions.

A-4. A report by Peter Avakian, Board Engineer, dated September 8, 2023.

A-5. Copy of the application checklist.

A-6. Zoning Officer Letter of Denial dated July 27, 2023.

A-7. Narrative of Intent from the applicant.

John Sarto, Esq. of the firm Giordano, Halloran and Ciesla then came forward to present this application. He proceeded to say this is an oceanfront property and was before the Board a year ago to demolish a single-family home and then split one lot into two buildable single family home lots, they are here to ask for a variance to build a new home on one of the new lots. The Sea Girt zoning requires that an integrated garage be set back from the building line of the principal dwelling by a minimum of 5 feet and they are asking for 1.5 feet.

At this time those who were going to testify were sworn in – Paul Grabowski, Architect, Ken Smith, Engineer and Norman Hobbie, property owner. All were accepted as expert witnesses by the Board.

Ken Smith, Engineer then came forward and put up Exhibit A-2, the plot plan, and said the original home was taken down with a CAFRA GD4 permit. They are proposing a new 2 ½ story dwelling with a front setback of 31.4 feet which is the average on this block, there will be a 5 ½ foot side setback where 5 is the minimum (total side setback will be 16 feet where 15 is required). The rear yard setback is 30 feet and they have 113.1 feet under CAFRA rules for the beachfront and the building coverage will be 19.8% which is under the maximum of 20%. The impervious coverage will be only 6.3% where 35% is allowed. Mr. Sarto then confirmed that this is a variance free application other than the setback for the garage and asked Mr. Smith to go over the CAFRA GD4 permit and explain what that is and how this constrains where the structure is built.

Mr. Smith told the Board that they had to apply to CAFRA and were told they can't increase the footprint of the home on the waterward side so what is shown on the plans is the rear yard setback and that permit was issued in March of this year. This constrains the location of the building which is what is causing the need for the variance relief. They will comply with the DEP/CAFRA requirements and also will comply with Mr. Avakian's condition 2-A which is submitting a grading plan with flow arrows and the stormwater runoff shall not be directed onto adjacent properties. They will work with the engineer on complying with the Sea Girt Flood Damage Prevention Ordinance as they are in Flood Zone X (condition 2-B). Mr. Smith then addressed condition 2-C, flood damage prevention measures and felt this is not required as they are in Flood Zone X but will again work with the engineer on this.

This was the end of Mr. Smith's testimony and Chairman Hall suggested the next witness speak and the Board and audience can ask questions of them after all testimony is given. At this time Mr. Paul Grabowski, Architect, came forward and

addressed Exhibit A-3, the Architectural plans. He went over the floor plans, patio, garage, second floor deck and noted the half story is the Master Suite with a bathroom and balcony facing the ocean. The exterior is keeping with the seashore colonial design with cedar shakes, they are not yet sure of the roof materials and the home will have stone or brick accents. They are complying with the side yard setbacks, the home will have dormers and a good roof pitch to help with light and air.

Mr. Sarto asked Mr. Grabowski about the variance relief for the integrated garage and the need for that variance, to break up the look of the front. Mr. Grabowski felt this creates differentiation in the façade, they also worked on the windows for a better transparent look and the half story is set a little back to also create a little more relief on the façade. Mr. Sarto then asked him about the other homes on this side of Morven Terrace and Mr. Grabowski said there are some new homes here and they have a similar setback but most have flat fronts and their design for 712 Morven does not have a flat look. This plan is consistent with the surrounding area and will not have an effect on light, air and open space and is not detrimental to the Zoning Ordinance.

As this was the end of the testimony it was time for Board questions. Mrs. Brisben asked for clarification on Item C in Mr. Avakian's report on flood damage prevention measures and Mr. Smith said they will install storm water management in the front yard but as far as flood vents they apply more to the other flood zones, they are not required in zone X. He did look at the Ordinance referenced by Mr. Avakian (14-5.1.e) and they did not apply to zone X.

Mr. Ward asked if Mr. Hobbie was going to sell the two lots as they both have a fore sale sign on them; is he going to live in 712 Morven; Mr. Hobbie said his intention is to build on 712 Morven. Mr. Ward's next question was in relation to the 18 foot wide porch and a 6 foot depth, was this depth adequate? Mr. Grabowski answered and said that most homes in Sea Girt on a 50x150 foot lot have porches at 6 feet. Mr. Casey asked about the porch in the back and how does CAFRA look at that construction as it appears to be beyond the setback. Mr. Smith answered and said the original patio was there and CAFRA said they can keep the original area for that and keep the home in it's original footprint so there is no problem as they are staying within the area allowed. Mr. Grabowski added that CAFRA is really only interested in the house itself, if there was a covered porch in that part they would not care, their main interest is the house footprint. This also means that they can never enclose that patio area, it has to stay open.

Mrs. Brisben asked, as the variance request is so small, why did they not just move the garage back and then they would not have had to come in. Mr. Grabowski said they can't move the house back and they need 275 square feet for the garage and, aesthetically, it looks much better to have the garage where they propose it. Mr. Casey asked if the back porch was in the building coverage and it was. Chairman Hall asked if anyone in the audience had a question and no one on the Zoom meeting had their hand up so Mr. Sarto was asked to summarize the application.

Mr. Sarto felt this application satisfies both the C-1 and C-2 criteria, they don't have the ability to push this back on the lot so they are asking the Board to approve the layout of this home. The Board then went into discussion: Mr. Casey felt this home will be consistent with the rest of the homes in this area and was for approval. Mr. Ward was fine with it and felt they did an excellent job. Councilwoman Anthony also felt they did a nice job and worked with the restrictions and appreciated changing the roof pitch to allow for proper air flow and light. Mr. Koreyva felt the house looks great and he was for approval as well as Mrs. Laszlo. Mrs. Brisben was also in favor of it after she understood that the house could not be pushed back due to the DEP/CAFRA constraints. Both Chairman Hall and Mr. Britt were also good for approval.

Mr. Kennedy then went over the conditions of approval: compliance with the testimony given, compliance with the Board Engineer's review memorandum, compliance with any affordable housing rules and regulations, 24 months to obtain building permits after the Resolution is adopted, obtaining any necessary outside approvals, if the application changes they will have to come back before the Board, grading and drainage to be approved by the Board Engineer, including drywells to be maintained according to industry standards, they will work out the details with Mr. Avakian on the flood damage prevention measures, build in accordance with the Board approvals. Mr. Sarto was okay with all the conditions noted and they will comply.

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

Ayes: Councilwoman Diane Anthony, Karen Brisben, Tom Britt, Jake Casey, Stan Koreyva, Eileen Laszlo, John Ward, Norman Hall

Noes: None

#### OTHER BUSINESS:

Mr. Casey spoke about the Ordinance Review Committee, he did not have a report but wanted the Board to know about 3 changes they want to have done by the end of the year – the first one is pools, hot tubs, definitions and clarifications. The next one is particularly challenging and has taken a lot of work, the use of existing accessory structures and what should be allowed and not allowed, such as second floors in garages, heating/air conditioning, plumbing in garages and accessory structures, they are seeing some of the rules stretched on this and it has become a hot topic so they want to get this done. The last one is property elevation changes, grading, retaining walls, water runoff. These are the ones they hope to have done by the end of the year, incorporating the Planning Board's input. Chairman Hall noted they are talking about only two months and Mr. Casey said they hope to have something for the November meeting for the Board.

Councilwoman Anthony asked about the grading issues and Mr. Casey said that Mr. Avakian sends any grading plan to the Board if there is over a 1-foot change, this being done for approval and not a variance; this started awhile back with a lot of dirt put on a property on Stockton and was allowed, over two dump trucks and the property was in a flood zone and the neighbors were not happy. Mr. Avakian then decided that he will not approve any grade change over 1 foot and it has to be approved by the Board. The Ordinance Committee had received comments to look into this so they have done that and are hopeful to make a recommendation this year.

Mr. Koreyva asked about his request to look into open porches and Mr. Casey said one of the Committee members is planning to speak to both him and Mrs. Laszlo on this as both Board members had asked about it. He said if this can get done this year that would be great but it may take a little longer. He also said that once their recommendations are passed on to Council he has found it takes many months to move along, he was not sure why and suggested perhaps Council has a lot of other things going on. Chairman Hall asked Councilwoman Anthony if she had any input on this and she said that she knew Mr. Gant has been speaking with the Review Committee and Mr. Bogan and they are working on this. Mr. Casey said if there are significant changes to what was submitted it comes back to the Ordinance Committee, this has taken a long time. Councilwoman Anthony commented that there are a lot of things going on in the Borough but Council is taking this seriously and they are grateful to the Ordinance Committee for doing all this work, a lot of time, energy and effort. Mr. Casey was not sure if he will have a report for the November meeting or the December meeting.

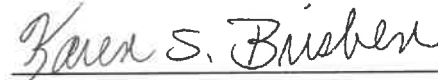
Chairman Hall then spoke to the Board regarding the November meeting, there will only be a Resolution for the Hobbie application and Mrs. Brisben had asked if it might only be a Zoom meeting as there are no applications and it will be a short meeting. Chairman Hall felt if Mr. Casey does have a report, then the Board may want to have a virtual & live meeting. It was decided to have a regular virtual & live meeting for November. Chairman Hall asked Mrs. Brisben about going back to just a live meeting and the need to have it recorded properly; Mrs. Brisben said she had spoken to the IT person here at the school, Rick, and he told her to speak to Mr. Gant as it was the Borough that purchased this equipment and he would have the proper people to contact, the ones that installed this, to find out about a recorder. Chairman Hall felt that we can continue to do the Zoom meetings only for those Board members that cannot attend who want to log in but not have it open to the public to participate on Zoom. Mrs. Brisben did not think that was legal and Mr. Kennedy said he will look into this, he thinks this will be discussed at the League of Municipalities convention next month and he will get more information at that time. There was a brief discussion on why Mr. Britt cannot be heard this evening by the Board but he was told that the people on Zoom can hear him, Mrs. Brisben noted this happened at the last council meeting they were setting up in the afternoon of that day and Mr. Gant and the IT person, Rick, went back behind the curtain and adjusted the speaker sound; Mrs. Brisben was told everything was in order for this meeting tonight but she will find out what the problem is for next month.

Wednesday, October 18, 2023

Before closing for the evening, Mr. Ward had a personal comment to make. With all that was happening in Israel over the past week, he felt we should all be speaking out about what went on; many people went to the 911 ceremony in September and we have now seen Israel's 911 and should speak out on it, he felt to not do so is a lack of moral leadership.

As there was no other business to come before the Board a motion to adjourn was made by Councilwoman Anthony, seconded by Mrs. Brisben and unanimously approved. The meeting was adjourned at approximately 9:20 p.m.

Approved: December 20, 2023

  
Karen S. Brisben, Secretary