

Wednesday, September 20, 2023

SEA GIRT PLANNING/ZONING BOARD
REGULAR MEETING
WEDNESDAY, SEPTEMBER 20, 2023

The Regular Meeting of the Sea Girt Planning/Zoning Board was held on Wednesday, September 20, 2023 at 7:00 p.m. online and virtual 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 and Chris Willms, Zoning Officer, were present and Board Secretary Karen Brisben recorded the Minutes.

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

Present: Carla Abrahamson, Councilwoman Diane Anthony, Karen Brisben, Tom Britt, Jake Casey, Mayor Don Fetzer, Stan Koreyva, Eileen Laszlo, Robert Walker, John Ward, Norman Hall

Absent: None

Chairperson Hall asked if anyone on the Zoom meeting wanted to discuss any item not on the agenda and there was no response.

The Board then turned to the approval of the Minutes of the June 21, 2023 meeting and Mrs. Laszlo made a motion to approve these, this seconded by Mayor Fetzer and then approved by a voice vote with Councilwoman Anthony abstaining.

NEW BUSINESS:

The Board then turned to an application for variance relief for Block 8, Lot 6, 812 First Avenue, owned by David & Linda DeStefano to allow construction of a patio with kitchen area, shade structure in the front yard of Morven Terrace, above ground hot tub in side yard. Building Coverage – 20% maximum allowed, 22.43% existing, 22.33% proposed. Pool (hot tub) located in rear yard only, side yard proposed. Pool (hot tub) no closer than 10 feet to a structure, 5 feet proposed. No pool (hot tub) located within 10 feet of rear or side property line, 5 feet proposed. Fence not to exceed 3 feet above ground level by front building line, 4 feet proposed along Morven Terrace street line. No deck, patio or similar structure permitted in front and side yards – patio, shade structure and kitchen area proposed in front yard along Morven Terrace.

The correct fees were paid, taxes are paid to date and the property owners within 200 feet as well as the newspaper were properly notified. Before starting the testimony, Mr. Kennedy marked the following exhibits:

A-1. The application.

A-2. Plot Plan for variance consisting of one sheet prepared by Matthew C. Hockenbury of MCH Engineering, Inc., dated January 3, 2023 with the latest revision dated May 3, 2023.

A-3. Architectural plan consisting of one sheet prepared by Eugene d. Wright, Jr., of The Lederer & Wright Partnership, dated May 4, 2023, with no revisions.

A-4. Topographic Survey of the property consisting of one sheet prepared by Jeffrey s. Grunn of Lakeland Surveying, dated February 12, 2021 with the latest revision dated December 6, 2021.

A-5. Report from Peter Avakian, Board Engineer, dated June 9, 2023.

A-6. Resolution on this property dated April 15, 1993.

A-7. Letter from Michael Rubino, Esq., dated August 23, 2023 dealing with the definition of spas, hot tubs, pools.

A-8. Letter from Peter Avakian, Board Engineer, answering Mr. Rubino's letter of August 23, 2023, letter dated September 11, 2023.

A-9. Picture Board submitted by Mr. Rubino consisting of 10 photos of the property along with an aerial view, the photos taken by the client and Mr. Rubino.

A-10. Handout of the property in question with renderings of the home before and after the renovations.

A-11. Picture Board of the Landscape Plan dated April 17, 2023 and done by Land Design, Inc.

A-12. Sheets of construction drawings prepared by Lederer & Wright Partnership, 13 sheets, dated June 2022.

Mr. Michael Rubino, Esq. came forward to present this application and said this block has all through lots so they have two frontages, one on First Avenue and one on Morven Terrace. If this property was not a through lot they would probably not be here for variance relief. He then referred to a previous approval on this property, from 1993, that allowed an overage in building coverage that created the 22.43% coverage and they are going to take this down to 22.33% coverage. Mrs. DeStefano's parents, the Swerdlows, owned this property at that time and were the ones that received the previous variance relief in 1993. Mr. Rubino's opinion was that variance relief for lot coverage was not necessary anymore on this application as the variance received in 1993 runs with the property and applies today. At this point Mr. Willms was sworn in as Zoning Officer and agreed that no variance is necessary for building coverage as that was already granted in 1993 and the lot coverage on the new application is for less at 22.33%.

At this point Mr. Ward asked Mr. Willms to read his Letter of Denial on this application as it was not included in the application submission and Mrs. Brisben, the secretary, had missed seeing this error. Mr. Willms did so, letter dated 1/27/2023 and a copy will be put in the file so Mr. Kennedy marked it as Exhibit A-13. Mrs. Brisben commented that she had received this from Mr. Willms earlier this evening and will send it to everyone for their files; she also stated that the Engineer's report was sent to all so they do have that to refer to. Mr. Rubino also apologized for not seeing that it was included in the submission.

Mr. Rubino then went over the other variances requested and commented they wish for a 4-foot fence as they have one young grandchild and want this for safety reasons. He did disagree on the definition of a hot tub and felt it was permitted in the side yard, he wrote for clarification and did receive that (Exhibit A-9) and is not disputing it any longer; he did say it will be in a down slope here in the side yard so no one will see it, there is an alteration of grade down of 1 foot.

At this time Mr. David DeStefano of 812 First Avenue, Ryan Clayton, Landscape Architect and Matthew Hockenbury, Professional Engineer & Planner all came forward and were sworn in. Mr. DeStefano spoke first and told the Board they have owned this property since 2016, it was inherited from Mrs. DeStefano's parents who had owned it since 1978 and they have been coming to the home every summer; they have 3 children. They already had received permits for renovation work on the second floor, that work did not need variances and they have also put in flood vents to make it safer and upgrade the home. Mr. DeStefano said he will refer to the Morven Terrace side as the back yard for this testimony and spoke of the neighbors, 804 First Avenue has a hot tub and outdoor kitchen, the neighbor north has a full pool, 810 First Avenue has a shade structure so they want to build what will work here and have curb appeal. There is a change in grade between Morven Terrace to First Avenue and they want to put the hot tub in the side yard so it is not seen from the street and will be lower here by one foot from Morven Terrace; he noted the shade structure will be 10x12, 120 square feet. He said the outdoor kitchen will have a grill that can be moved as it is on wheels and one of their children has a dog which is another reason for a 4-foot fence. He showed the properties on the picture Board and the other homes with pools, hot tubs, spas and shade structures. He also noted his wife has neck and back issues and would like the hot tub, it will be covered and locked when not in use.

Next to come forward was Matthew Hockenbury of MCH Engineering, Inc. who stated he has testified before many Boards in Monmouth County and is licensed in NJ as an Engineer and Planner, the Board accepted him as an expert witness. This lot is conforming as it is 50x150 feet and has a two-story dwelling with a two-car garage and a closed porch. The lot is over on impervious coverage at 37.88% but they are proposing to reduce it to 32.53% which conforms, this was done by straightening out the driveway. Part of the property is in the Flood Zone and, as stated by Mr. DeStefano, the work on the dwelling itself conforms but the outside improvements need variances. He also noted the rooftop deck that was on the original home has been taken down and new siding has been put up for a more modern look. He commented that the proposed hot tub will be 7.3x7.3 feet which is a standard size but the usual depth is two feet and this will be three feet and the grade is 13 feet on Morven Terrace and goes down to 9 feet on First Avenue so the hot tub will be lower than the street. They are asking for a 4-foot fence to enclose all the outdoor functions, for safety and protection as well, it will be an open picket style and there will be landscaping; it will not impact sight lines or sight triangles. They are adding a recharge system and also asking for a design waiver for the grade change to exceed one foot for the hot tub. Mr. Hockenbury noted that the outdoor functions requested are common in the Borough and the aerial photo (exhibit A-9) shows this. He told the Board this application will provide light, air & open space, the

drainage system is twice as much as required and they will be in compliance with the Flood Regulations. He then went over Exhibit A-10 which showed the front of the existing dwelling and then the renovated dwelling and the driveway straightened out. The next page showed the back of the home as it existed and then the renovated home. The next page shows views of the hot tub and upper patio, photo on the right shows the same thing but from a different angle, the next page is looking southwest and shows the proposed shade structure, photo on the right is looking to the west showing the hot tub and shade structure and outdoor kitchen. He noted the shade structure does conform to the requirements for this type of structure, roof pitch, height, area and needs variance relief as it is in a "front" yard. The next page shows a better picture of the proposed outdoor kitchen, the next page is an aerial photograph with a yellow line showing the 40-foot setback and the homes that do not comply on this block on the north side, as well as showing the pools, hot tubs, patios, shade structures, etc. Mr. Rubino felt this aerial shows that the approval of this application would not disturb the consistency of the neighborhood.

The next person to speak was Ryan Clayton, licensed Landscape Architect, he has been licensed for 20 years and was accepted as an expert witness by the Board. His plan is seashore landscaping that can withstand salt & wind, this property will be heavy with evergreens and shrubs that will be 7-8 feet when planted and grow to about 14 feet and there will be evergreens where the hot tub will be, he emphasized that the entire property will be landscaped. They will be putting in grasses, too, that will be attractive. He ended his testimony stating that some of the landscaping is already in on the west and part of the south side of the property.

Mr. Hockenbury then came back to the podium to address Mr. Avakian's letter of June 9th, he stated a lot of it has already been gone over and they agree with the report in total. He said there will be no negative impact from this project and the drainage proposed more than complies with what is required. They will get a Flood Hazard Certificate as per the Engineer's report and he commented the September 11th memo from Mr. Avakian has already been addressed earlier and is not contested.

At this time the Board had questions: Mr. Walker asked about seats in the hot tub and Mr. DeStefano said there will be seats in the hot tub, about two feet high. Mayor Fetzer asked about landscaping extending into the neighbor's property and Mr. Hockenbury said that was existing and he showed the new plan. Mr. Ward asked about the 5 feet from the dwelling for the hot tub and that it should be 10 feet, he asked about a safety issue? Mr. Clayton said Sea Girt has a 10 foot requirement while other towns have less, usually 8 feet; he added this is not a "pool" and it will be 6.8 feet from the home, it can't be jumped into from the roof and it will be closed and locked when not in use. Mr. Ward's second question was on the property being flood compliant and how does this benefit the town? Mr. Clayton said that, by being flood compliant, it helps the community rating and there are flood vents too if flooding occurs the house will not be damaged. Mr. Rubino added this is a major renovation and they had to bring this property into the Flood requirements. Mr. Ward's final question was about how much of the home was taken down, he referenced a comment on it be taken down to studs

and he questioned this. Mr. Willms answered and said the Borough's definition is 50% volume of the home and since the outside walls, the roof and floor structures all remained it did not trigger that 50% volume.

Mr. Casey questioned the comment of this project being 25.92% over building coverage on the Zoning Officer's Letter of Denial and Mr. Clayton answered that by stating they included the shade structure for that submission and the Board Engineer, Mr. Avakian, decided that did not need to be counted so his report states 22.33%. Mr. Casey questioned the fence location and height of 4 feet requested, Mr. Clayton said this is a variance need as only 3 feet is allowed in the front yard; they are asking for a 4-foot fence which needs a variance as to height and a variance as they want this 4-foot fence in the front yard setback. Mr. Casey asked about a fence across the front yard and Mr. Willms said you can have a 3-foot fence in this location. Chairman Hall asked why is the pool "portable"? Mr. Clayton said it is not in a foundation and did not feel it is a pool, it is a hot tub. Mr. Britt asking about the grade level decking being calculated in the building coverage and Mr. Clayton said it did not have to be included.

Councilwoman Anthony asked about the shade structure, what is the overhang coverage; Mr. Clayton said there will be a one-foot overhang. Mrs. Brisben asked about the drainage as there will be a one-foot drop by the hot tub and how does that affect this; Mr. Clayton said they brought the retaining wall down the south property line and it will address this without going into the neighbor's property; Mr. Willms agreed. She then asked about that statement that the outdoor kitchen was "movable" and Mr. Rubino said the grill part was, it is on wheels, the rest is not portable. Mayor Fetzer questioned the wording for the hot tub on the plans and Mr. Clayton agreed that was from the first set and the wording can be revised to be proper with the final submission. Mayor Fetzer then asked about the piped drainage and was told it will be piped from the roof; he then asked about the height of the retaining wall on the south side and was told it is a little over 14 inches. Mr. Ward questioned the answer they gave to Councilwoman Anthony on the overhang, he thought it was 10 inches and Mr. Rubino said they can agree, for the Resolution, the overhang will not be more than 12 inches. Mrs. Abrahamson thought the allowance for an eave was 18 inches and Mr. Willms said the Ordinance does not define what kind of structure an overhang is on and it can go to 18 inches. This is permitted for garages and such, from the setback line, eaves and gutters cannot go over any more than 18 inches, if they want to reduce it to 12 that is up to the applicant.

As there were no more Board questions it was opened to the participants in the Zoom meeting to ask questions and there was no response. Mr. Rubino then summarized the application. He told the Board that, when the Stockton Hotel was destroyed it was a shame that the lots created on part of that property ended up with two front yards, it was never delineated for the Morven Terrace and First Avenue block. It seems that the First Avenue side of used as a front yard but there are a couple of exceptions to this but the overwhelming homes use Morven Terrace as the rear yard. Mr. Rubino felt the testimony does show this variance application can be approved. Mr. Kennedy asked him if he agreed with the Avakian report that the hot tub is defined as a

pool and Mr. Rubino said is only 54 square feet but they are not disputing the definition. Mr. Ward asked about a soil boring being done and Mr. Rubino said this will be provided as per the Engineer's letter.

At this time the Board went into discussion and Mr. Casey started this by commenting he felt the improvements look great but he had concerns with the number of variances being requested; the house is already over on building coverage and he is struggling with this being an overbuild. Mr. Ward had a safety concern with the pool and they want a higher fence, he felt the application could be brought down to less variances, it seemed like an awful lot of building. Mayor Fetzner was troubled by the pool location and felt it looks like a crowded area with a lot of stuff going on, the shade structure of close to the road and this is pushing the envelope up close and personal to the line. Mr. Walker said he visited the site and felt it fits in the area, it is a well thought out application. Mr. Britt was in favor of treating this as a rear yard but was less comfortable with 11 feet from the hot tub to the neighbor's home.

Councilwoman Anthony had two concerns, the hot tub and the shaded structure by the property lines. Mr. Koreyva felt there was no issue with the building coverage as that was previously approved and, even though it is defined as a pool by the Engineer, it really is a hot tub, maybe it can be moved, and the 4-foot fence made sense. Mrs. Abrahamson agreed with Mr. Koreyva, everyone here has an issue with two front yards, something she would like to see addressed, she was fine with the hot tub but was agreeable to it being moved; she noted one of the other homes on the aerial presented looks like their pool is right on the property line. Mrs. Laszlo thanked the applicants for their presentation and felt their explanation of why the variances are needed, it does look like a variance rich application but she was in favor and she noted there are no neighbors present to oppose or comment. Mrs. Brisben started out thinking there were too many variances being asked for and she really appreciated seeing Exhibit A-10, the aerial that showed the 40-foot setback and what everybody has on their property; after seeing this she feels the variances requested will fit in well on this property and did not think the hot tub will be seen as it will be on a lower grade, she was for approval. Chairman Hall had an issue with the hot tub and its location but felt the rest was fine. He then asked Mr. Rubino how he wanted to vote on this and Mr. Rubino asked for a 5-minute break and this was done at 8:40.

Mr. Rubino came back at 8:45 to a full Board and asked for a separate vote, one for the hot tub and one for the other variances. Mr. Clayton spoke up and said if they move the hot tub closer to the home they can remove a variance for the south property line, it would be 10 feet. Chairman Hall asked how close will it be to the house and was told 20 inches. Mr. Rubino reminded the Board that they do not need a variance for building coverage that was already granted back in 1993 and is being reduced by this application. There was then a discussion on the location of the hot tub. Mr. Walker felt the requirement was two feet from a structure but Mr. Willms said it is either two feet or what the manufacturer recommends, but it is usually two feet so there may be construction code requirements that may need to be met. He also commented this is to

be from the surface of the water and not the outside edge so there may be a little bit of play here. Mr. Rubino said they will comply to the construction code.

Mrs. Laszlo felt this needs to be clarified on this hot tub, this introduces other hazards they she was not comfortable with, the professionals have decided this is where it should be and she felt it is far enough where it has been put; it may not affect this family but future families may be impacted by this closeness to the house and it is a respectful distance from the neighbors, who had been noticed on this application. Mrs. Abrahamson agreed with Mrs. Laszlo.

At this time Mr. Kennedy went over the conditions of the application: compliance with the testimony made tonight, compliance with the Board Engineer's review letter, getting necessary outside approvals and if there are changes due to the outside approvals they will have to come back to the Board, compliance with any affordable housing requirements and construction code requirement, 24 months to obtain a building permit, standard wording that what was approved is what can be built and not something else, drainage approvals by the Board Engineer, building coverage variance not necessary, landscaping put in and maintained, compliance with FEMA regulations, hot tub hidden from view, site triangle easements, flood hazard certificate needed as well as soil borings, overhang on shade structure not to be more than 12 inches & shown on the architectural plans, drainage and drywell system piped from the roof.

The Board then had a discussion on the location of the hot tub, should it stay where it is on the original application or moved 5 feet to the north and be 20 inches from the house. Chairman Hall, Mrs. Laszlo and Mrs. Abrahamson felt it should stay where it is projected to be and not have it closer to the house. Mrs. Brisben suggested having a motion, second and then a vote as to this location and Mrs. Laszlo made a motion to keep the applicant's original positioning of the hot tub and move forward with that, this was seconded by Mrs. Abrahamson and approved by the following roll call vote:

Ayes: Carla Abrahamson, Councilwoman Diane Anthony (she questioned the close location to the neighbor but was told by Mr. Hockenbury it is by the neighbor's garage and not their living area and the garage does not have windows there), Karen Brisben, Jake Casey, Eileen Laszlo, Robert Walker, Norman Hall.

Noes: Mayor Don Fetzer, John Ward

Mr. Kennedy then spoke of the building coverage variance, Mr. Rubino says it is not necessary as a variance to allow this was approved back in 1993 and now they are lessening what was approved in 1993. Mr. Kennedy said both he and Mr. Willms agree with this thinking and that a variance is not necessary for building coverage and a vote will be taken to find out if the Board feels it is a variance or not. Mr. Koreyva asked why a vote is necessary as the professionals have determined there is not a need to approve a building coverage variance, Mr. Britt agreed. Mr. Kennedy said that, when a variance is granted, it runs with the land; if the home were demolished there would be a different story and the variance would disappear because the home was taken down.

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He asked for a motion to confirm that, under these circumstances because a variance was previously granted and is not been exceeded, no building coverage variance is required. This motion was made by Mayor Fetzer, seconded by Mr. Walker and then by the following roll call vote:

Ayes: Carla Abrahamson, Councilwoman Diane Anthony, Karen Brisben, Jake Casey, Mayor Don Fetzer, Eileen Laszlo, Robert Walker, John Ward, Norman Hall

Noes: None

Mr. Kennedy then spoke about the final vote, which is for all the other elements of the application and subject to all the other conditions that were previously covered, including the design waiver. A motion to approve these was made by Mr. Walker, seconded by Mrs. Laszlo and then by the following roll call vote:

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

Noes: Jake Casey, John Ward

OTHER BUSINESS:

Mr. Casey then spoke about the Ordinance Review Committee and said there is not a new report yet, they are still working on items. Mrs. Laszlo noted that the Administrator's newsletter had stated that Council has 7 Ordinances to review from them, all approved by the Planning Board; she wanted to know what those 7 are. Mr. Casey explained that the Ordinance Review Committee presents their findings to the Planning Board, then they submit the proposal to the Council subcommittee who then goes over it and may edit it, the final then comes back to the Planning Board for another approval and then it goes to Council for consideration. He said the 7 Ordinance changes are: 1) Tree Preservation has been finalized, the Council subcommittee is working on 2) Elevated Mechanicals, 3) Roof Pitch, 4) Half-Story Definition, 5) Driveways, 6) Basement under Garages and 7) Lighting Issues.

Mayor Fetzer felt the Ordinance Review Committee has done a fabulous job, way more than what was expected and the Council subcommittee is working on these. He was a little concerned that perhaps they are getting into miniscule items and the Review Committee may want to think about that. He also commented that these items may have to wait until next year for finalization but the Council subcommittee is working. Mr. Willms agreed with Mayor Fetzer on the timing and explained an Ordinance cannot be introduced in 2023 and then not adopted until 2024, it has to be in the same year so it may be wise to finalize these in 2024. Mr. Willms suggested to shoot for the February 2024 meeting for an introduction, the January meeting is Reorganization; it would not be logical to try to introduce something then. Mayor Fetzer reminded all that this has to

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work with what Mr. Willms needs to enforce these Ordinances so there is work to be done.

Mr. Britt mentioned that there are two more items to be addressed, grading changes and front porches, the Ordinance Review Committee is still working on these. Mrs. Laszlo felt it has been an amazing effort and has taken a long time and was looking forward to 2024 to finish these.

The last item was something Chairman Hall wanted to discuss with the Board and that was to have a conversation on staying virtual and live or just going live for meetings, he was for just going back to live meetings only, there seem to be technical issues with being virtual as well and there are not a lot of people on virtually. Mayor Fetzer felt this has worked well with the Council meetings and noted that if a Councilmember is away, they can log in and partake of a meeting and vote. They do have more on the Zoom meetings, between 10-25 people.

Chairman Hall felt the Planning/Zoning Board is different from Council as there are presentations from professionals with photos and plans. He used tonight's meeting as an example, there were a lot of exhibits entered. Mr. Kennedy asked how a meeting would be recorded and Mrs. Brisben said the town would purchase a new recorder that can work with the current system. Chairman Hall had a suggestion of still recording on Zoom if a member is away so they can take part but not have it open to the public, Mrs. Brisben was not sure if that could be done legally and Mr. Kennedy said he would have to look into that to see if there are any legal restrictions. Mr. Willms said the exhibits could be shown on the screen if they are digitally submitted, no last minute entries and Mr. Casey commented he is not for last minute picture board or exhibits as well. Mr. Kennedy said he will inquire into other towns to see what they are doing and what works and what doesn't. Mr. Britt felt this can be done if there is an expert that can come to the meetings and do the recording and screen sharing, etc., other businesses do it. Mrs. Laszlo thought the Board was to have their own individual I-pads to use, this was discussed at a meeting that was held in the school library in the beginning of looking into going live and virtual. Chairman Hall explained they then decided to purchase the equipment that the Board is using rather than using the I-pads and Mrs. Brisben said the equipment that was purchased was done by the town and not the school. Chairman Hall closed the meeting by asking all the Board members to think about this.

As there was no other business to come before the Board, a motion to adjourn was made by Councilwoman Anthony, seconded by Mrs. Laszlo and unanimously approved, all aye. The meeting was adjourned at approximately 9:25 p.m.

Approved: October 18, 2023

Karen S. Brisben, Board Secretary

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