

Wednesday, March 15, 2023

SEA GIRT PLANNING/ZONING BOARD
REGULAR MEETING
WEDNESDAY, MARCH 15, 2023

The Regular Meeting of the Sea Girt Planning/Zoning Board was held on Wednesday, March 15, 2023 at 7:00 p.m. at the Sea Girt Elementary School on Bell Place as well as being a hybrid meeting.

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 Peter Avakian, Board Engineer were present and Board Secretary Karen Brisben recorded the Minutes, there were 4 people in the audience and 2 people online.

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

Present: Councilwoman Diane Anthony, Karen Brisben, Tom Britt, Jake Casey, Mayor Don Fetzer, Robert Walker, Eileen Laszlo & John Ward attended on Zoom, Norman Hall

Absent: Carla Abrahamson, Stan Koreyva

Chairperson Hall asked if anyone in the audience or on the Zoom meeting wanted to discuss any item not on the agenda and there was no response. He then asked for approval of the Minutes of the February 15, 2023 meeting and Mrs. Brisben said she had heard from Mr. Casey that there was one error, she has Chapter 9 referred to in the Committee report and it is Chapter 19. Mr. Ward then spoke and said in those Minutes he had asked for the letters written in objection to the Wind Turbines be put on the website and was told they would be but they are not there as yet. Mayor Fetzer thought it was on and he will look into it. There being no other comments on the Minutes a motion was made by Mr. Ward to approve with the proper Chapter number, this seconded by Councilwoman Anthony and approved, all aye.

Mr. Kennedy wanted to state that this meeting and the logon information had been advertised and, therefore, was a lawful meeting; he asked Mrs. Brisben to recite the logon information which is for a Zoom Meeting, 890-5414-6202.

OLD BUSINESS:

The Board then turned to the approval of a Resolution for Block 65, Lot 7, 415 Chicago Boulevard, owned by Thomas & Deborah Cusimano, to allow a generator in the Front Yard Setback. Mr. Kennedy noted that Mr. Casey had asked for a few changes in the Resolution and he went over them as well as the conditions of the Resolution. The following final Resolution was then approved by the Board:

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WHEREAS, Thomas and Deborah Cusimano have made Application to the Sea Girt Planning Board for the property designated as Block 65, Lot 7, commonly known as 415 Chicago Boulevard, Sea Girt, New Jersey, within the Borough's District 1, East Single-Family Zone, for the following approval: Bulk Variance approval associated with a request to install a generator at the site; and

Public Hearing

WHEREAS, the Board held a Public Hearing on February 15, 2023, Applicants having filed proper Proof of Service and Publication in accordance with Statutory and Ordinance Requirements; and

Evidence / Exhibits

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

- *Zoning Application Package, introduced into Evidence as A-1;*
- *Zoning Officer Denial Letter, dated August 14, 2022 introduced into Evidence as A-2;*
- *Site Plan, prepared by think Design Architecture, dated December 9, 2022, consisting of 1 sheet, introduced into Evidence as A-3;*
- *Survey of property, prepared by Morgan Engineering and Surveying, dated June 17, 2021, introduced into Evidence as A-4;*
- *Leon S. Avakian, Inc. Review Memorandum, dated January 17, 2023, introduced into Evidence as A-5;*
- *Four (4) photographs of the subject property, collectively introduced into Evidence as A-6a, A-6b, A-6c and A-6d;*
- *Four (4) photographs of the subject property, taken by Deborah Cusimano in February of 2023, collectively introduced into Evidence as A-7a, A-7b, A-7c and A-6d;*
- *Affidavit of Service;*

- *Affidavit of Publication.*

Witnesses

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

- Deborah Cusimano, Applicant, appearing pro se;
- Christopher Shaffer, an Electrician Apprentice, and the Managing Member of Aquatech Mechanical Plumbing, LLC;

Testimony and Other Evidence Presented on Behalf of the Applicants

WHEREAS, testimony and other evidence presented by the Applicants revealed the following:

- The Applicants herein are Thomas and Deborah Cusimano.
- The Applicants are the owners of the subject property.
- The Applicants have owned the subject property since approximately 2021.
- There is an existing single-family home on the property.
- The Applicants live at the site.
- As a result of prior power outages and the inconveniences associated therewith, and the Applicants desire to avoid such future power-loss issues, the Applicants desire to place a generator at the site.
- The generator will provide power to the site when the electricity has been temporarily knocked-out.
- Details pertaining to the proposed residential generator include the following:

Unit Type	Residential Unit
Model	Generac 22 KW (G007043)
Unit Condition	Brand new unit

Dimensions	48 inches wide x 29 inches tall x 25 inches deep
Power Source	Natural Gas
Foundation	Elevated pre-fabricated Gen Pad (concrete pad) (4" thick)
Method of Attachment	The generator unit will be bolted to the platform.
Sound generation	Approximately 67 decibels (or lower) (quiet test mode)
Enclosure	The generator unit will be physically encased in a sound attenuating enclosure.
Use Frequency	As necessary, and only when the power servicing the home dips below a designated voltage.
Testing Procedure	The generator will be tested 1 time per week (for approximately 5 - 10 minutes).
Safety Feature	The unit will have an automatic safety feature, whereby the generator will fail if flood waters compromise the same.

- The Applicants will contract with a licensed installer to install the said generator.
- The Applicants will be placing the generator on the southwestern portion of the property, off of Fifth Avenue, per the Plans.
- The said host location was chosen for a number of reasons, including, the following:
 - The Prevailing State Law requires that the generator must, at a minimum, be located at least 18 inches from the home and 5 ft from the windows / doors / fresh air intakes (and the Applicants' proposed location conforms with such a requirement).
 - The generator will be placed on a platform, so that the same will be less susceptible to flooding.
 - The proposed generator can and will be appropriately shielded at the proposed location.
 - The proposed generator is located near other utility stations.

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- Other potential host locations at the site are not preferred.
 - There are no known safety concerns associated with the proposed location.
- The Applicants will look to have the generator installed as soon as possible.

Variance

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

*MECHANICAL EQUIPMENT LOCATION:
Pursuant to the Prevailing Zoning Regulations, all exterior equipment, including the proposed generator, shall be located in the rear yard area (and / or on the top story of either the principal building or an accessory building on the site); whereas, in the within situation, the Applicants propose to install a generator in a technical front yard area (off of Fifth Avenue).*

Public Comments

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

- Lisa Luke

Findings of Fact

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

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

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

2. The subject property is located at 415 Chicago Boulevard, Sea Girt, New Jersey, within the Borough's District 1, East Single-Family Zone.

3. The Applicants desire to place a generator at the site.

4. The host location for the proposed generator does not comply with the Prevailing Zoning Requirements.

5. As such, Variance Approval is required.

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

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

- Under the Prevailing Zoning Regulations, a generator, such as proposed herein, is required to be located in a rear yard area (or on top of a principal / accessory structure).
- Thus, because the Applicants herein are placing a generator in a technical front yard area, off Fifty Avenue, Variance relief is required.
- The subject property is located at the corner of Chicago Boulevard and Fifth Avenue.
- As a corner property, there are, essentially, 2 front yards (albeit with different setback requirements).
- The proposed generator will be located in the Applicants' functional side yard area.
- As indicated, the generator will be placed where the existing electrical / gas utility stations; which furthermore underscores the desirability of the proposed host location.
- In order to place the generator in another area at the site (as required by the Borough Ordinance), the Applicants would need to remove an existing deck, which does not seem practical nor functional.

- During the Public Hearing process, a question was raised as to whether the Applicants could utilize a smaller generator, so as to eliminate, or otherwise minimize, any potential Variance relief. In response, the Applicants' representatives indicated that while a smaller generator is possible, the smaller generator would not provide the power that the Applicants need to be generated.
- The Board is also aware that a smaller generator, in a technical front yard area, would nonetheless still require Variance relief.
- The Board is aware that there are a number of pre-existing non-confirming conditions at the site – and the Board furthermore acknowledges that the aforesaid conditions are not being exacerbated as a result of the within approval for the within installation of a generator.
- Per the testimony and evidence presented, the location for the proposed generator will be extensively shielded by significant landscaping and, as such, the same will not be visible from the street.
- The fact that the generator located in a technical front yard area will not be visible from the street certainly helps minimize any adverse impact otherwise associated with the requested Variance relief.
- As a condition of the within approval, the existing landscaping around the generator will be perpetually maintained / replaced / replanted, as necessary, so that the visual buffer, as aforesaid, will always exist.
- Per the testimony presented, there is a need for a generator at the site.
- The potentially frequent power-outages, and the adverse consequences associated therewith, constitute an understandable basis for the need for a generator.
- The proposed generator is appropriately sized for the residential neighborhood in which it will be located.
- The Applicants considered a number of locations on the site to serve as a host for the generator. However, the proposed host location is appropriate for a number of reasons, including, the following:
 - The Prevailing State Law requires that the generator must, at a minimum, be located at least 18 inches from the home and 5 ft. from windows / doors / fresh air intakes (and the Applicants' proposed location conforms with such a requirement).

- The generator will be placed on a platform, so that the same will be less susceptible to flooding.
 - The proposed generator can and will be appropriately shielded at the proposed location.
 - The proposed location is close to other utility stations.
 - There are no known safety concerns associated with the proposed location.
 - Other potential host locations on the property are not practical.
- As a result of the above, the proposed host location for the generator is the most appropriate at the site.
 - There are, essentially, no other practical/viable locations (on the site) for the generator to be located.
 - The generator will be significantly shielded with landscaping.
 - Subject to the conditions contained herein, and subject to the landscaping conditions contained herein, the location of the generator will minimize, to the greatest extent possible, any disturbance to the neighboring properties.
 - The proposed generator will be substantially shielded / landscaped from the neighboring property / street.
 - The subject property is located on a corner (Chicago Boulevard and Fifth Avenue). As a corner property, there are 2 front yard areas, which further complicate the ability of the Applicants to satisfy all Prevailing Zoning Regulations.
 - Though the Board would generally / typically require the generator to be located in a conforming location, the Board is aware that compliant locations on the site would not necessarily be viable / practical / functional host locations.
 - The proposed location for the generator unit is appropriate.
 - The proposed generator will be a unit specifically designed for residential use.

- The proposed generator will be a brand new unit, which will satisfy prevailing energy efficiency ratios.
- Per the testimony and evidence presented (and per prior testimony received by Board members in other similar Applications), the noise levels associated with the proposed generator equate to typical noise associated with a vacuum, dishwasher, or lawnmower (from approximately 100 feet away).
- The generator will be tested one time per week, for an approximately 5 - 10 minute period. Per the testimony presented, it is not expected that the noise from the said testing will prove problematic or annoying for the neighbors. If any noise from the said testing reasonably bothers the neighboring property owners, the Applicants can presumably arrange for the testing time to be reasonably changed.
- The generator will have an automatic shut-off / safety feature.
- The Board is aware that a smaller generator would not necessarily constitute a quieter generator.
- There were no public objections associated with the proposal. (In fact, one of the affected neighbors attended the Public Hearing and publicly endorsed approval of the Application.)
- The approval of the within Application will not materially change the overall aesthetic appeal of the existing single-family home.
- Approval of the within Application will not appreciably intensify the single-family nature of the home / site.
- Subject to the conditions set forth herein, the benefits associated with approving the within Application outweigh any detriments associated therewith.
- 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.
- 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 satisfied the statutory requirements of N.J.S.A. 40:55D-70(C) (Bulk Variances).

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Based upon the above, and subject to the conditions contained herein, 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 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 January 17, 2023 Review Memorandum from Leon S. Avakian, Inc. (A-5).
- c. The generator to be installed at the site shall be for residential use only.
- d. The generator shall comply with all Prevailing / applicable Regulations regarding noise and decibel levels.
- e. The testimony and evidence presented revealed that there appears to be an approximate 3 ft. survey encroachment at the site, whereby the Applicants' landscape wall and other landscaping (on the northwest portion of the property) appear to encroach into the Municipal Right-of-Way. (At the time of the Hearing, it was unknown if there was any formal approvals granted for such an alleged encroachment.) As extensively discussed at the Planning Board Meeting, the Planning Board has no authority / jurisdiction to authorize the placement of an improvement within the Municipal Right-of-Way or otherwise on Municipal property (or property owned by any other third party). Thus, the within approval shall not, in any way, be construed as any type of endorsement / approval / legitimatization of the referenced potential Survey Encroachment. Rather, the Applicants are aware that the matter may be further reviewed / analyzed / studied / processed by the Borough of Sea Girt, and / or Agents thereof. The Applicants are also encouraged to more formally review and correct / cure the matter with the Applicants' Real Estate / Title Company professionals as well.
- f. In conjunction with the above point, the Board Attorney is authorized to communicate with Agents of the Borough of Sea Girt so as to

officially advise as to the existence of the alleged Survey Encroachment.

- g. The Applicants shall comply with all Prevailing Provisions of the Building Code / Construction Code.
- h. The Applicants shall obtain any and all necessary outside approvals. If material changes to the Plans are necessary as a result of such outside approvals, the Applicants shall be required to reappear before the Board and repetition the Board for any further / necessary relief.
- i. The installation of the generator shall, in all respects, comply with Prevailing State / Local Requirements.
- j. The generator shall be installed by an appropriately licensed / certified Contractor, as necessary / mandated.
- k. The generator shall be maintained in accordance with the manufacturer's guidelines and other best practices.
- l. The improvement authorized herein shall comply with all prevailing decibel level requirements as imposed by the United States of America, State of New Jersey, the Borough of Sea Girt, and/or any other Agency having jurisdiction over the matter.
- m. The landscaping at the site shall be re-planted, maintained, replaced as necessary so as to perpetually provide the necessary visual buffer around the generator, particularly in light of the non-conforming location for the same.
- n. The Applicants shall comply with all Prevailing Building / Construction Requirements in connection with the installation / placement / use of the generator.
- o. The Applicants shall provide the Board Secretary with the unit specifications for the generator approved herein.
- 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
 - Fire Permit

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- s. The installation shall be strictly limited to the Plans which are referenced herein, and which are incorporated herein at length. Additionally, the installation shall comply with Prevailing Provisions of the Uniform Construction Code.
- t. 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.
- u. The Applicants shall, in conjunction with appropriate Borough Ordinances, pay all appropriate/required fees and taxes.
- v. Unless otherwise agreed by the Planning Board, the within approval shall be deemed abandoned, unless, within 24 months from adoption of the within Resolution, the Applicants obtain the permits for the installation 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 mis-representations 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 their agents / representatives accept any responsibility for the structural design of the proposed improvement, or for any damage which may be caused by the installation.

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FOR THE APPLICATION: Councilwoman Diane Anthony, Karen Brisben, Tom Britt, Jake Casey, Mayor Don Fetzter, Robert Walker, John Ward, Stan Koreyva, Norman Hall

AGAINST THE APPLICATION: None

ABSENT: Carla Abrahamson, Eileen Laszlo

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

IN FAVOR: Councilwoman Diane Anthony, Karen Brisben, Tom Britt, Jake Casey, Mayor Don Fetzter, Robert Walker, John Ward, Norman Hall

OPPOSED: None

INELIGIBLE TO VOTE: Eileen Laszlo

ABSENT: Carla Abrahamson, Stan Koreyva

NEW BUSINESS:

The Board heard an application for a Use Variance for Block 92, Lot 2, 802 Seventh Avenue, owned by Triple R Real Property, LLC, to allow renovations and addition to a half story, addition over garage, barrier free ramp and associated improvements. Rear Yard Setback – 30 feet required, 18 feet to second floor addition over garage on Bell Place. North Side Building Setback – 6 feet required, 3.9 feet proposed for addition over Garage (expansion of non-conformity). Half Story Attic space above Second Floor – 50% of second floor allowed, 52.3% proposed. Parking space – 10 x 20 feet required, 10 x 18 feet proposed. Existing Non-Conformities: Commercial Use – retail on first floor, apartments on second floor, building has residential apartment on first floor (creates a Use Variance for expansion of a non-conforming use). Minimum Lot Depth – 150 feet required, 99 feet existing. Rear Building Setback – 30 feet required, 17 feet existing (18 feet to proposed second floor addition). North Side Building Setback – 6 feet required, 3.9 feet existing.

The proper fees were paid, taxes are paid to date and the property owners within 200 feet as well as the newspaper were correctly notified. Mr. Kennedy explained that both Councilwoman Anthony and Mayor Fetzter could not hear this application as it is a Use Variance and they are not eligible to hear this. Both he and Mrs. Brisben had

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reviewed the notices and all was in order so the Board has jurisdiction to hear this application; he then swore in Peter Avakian, Board Engineer.

The following were then marked as exhibits:

Exhibit A-1. the application.

Exhibit A-2. Architectural plans, prepared by Paul Damiano Architects, LLC, 4 sheets, dated 9/23/22.

Exhibit A-3. Existing architectural plan prepared by Paul Damiano Architects, LLC, 2 sheets, dated 7/29/22.

Exhibit A-4. Survey prepared by F P & L Associates, Inc., dated 2/8/22.

Exhibit A-5. Board Engineer's review report dated 2/23/23.

Exhibit A-6. Application checklist.

Exhibit A-7. Letter of Denial from Zoning Officer Chris Willms, dated 9/14/22.

Exhibit A-8. Photos of the property taken by Attorney Michael Rubino, 6 photos, dated 3/14/23.

Exhibit A-9. Photos of the property taken by Paul Damiano, Architect, 5 photos along with one historical aerial photo from 1979, dated 3/15/23.

Charles Shaw, Esq. was representing the applicant this evening as Mr. Rubino was not available and Mr. Kennedy asked him who the principals are in the LLC of Triple R Real property, LLC; Mr. Shaw said there is one, Gina Kennedy. Mr. Kennedy noted that Gina Kennedy is not a relation of his and asked the Board if anyone had a conflict with the LLC and no one did.

Mr. Shaw then started his testimony and said they did not think this was a Use Variance application originally, they are not changing the footprint of the building. Right now it is commercial on the first floor and residential on the second floor, they want to build over the existing garage so they need setback variances as well as others. Before going further, Mr. Kennedy explained that, as this is a Use Variance, it needs 5 affirmative votes and he asked Mrs. Brisben how many members are able to hear this, the answer was 7 members to vote; Mr. Kennedy then felt it was proper to proceed, Mr. Shaw agreed.

Gina Kennedy then came forward and was sworn in, giving her address as 802 Seventh Avenue (she resides at the property). She said she was the managing member of the LLC, she has lived in the shore area for 20 years, resided in Spring Lake before moving to Sea Girt last year. She lives in an apartment on the second floor with her two sons. She wants to add an apartment on the third floor in an area that is now unfinished. The downstairs is retail and there will be no change in the building footprint and she added that the new apartment will be a rental. This property fronts on Highway 71 (Seventh Avenue), the back has the garage and there is a separate entrance on Bell Place for access to the residential use, Highway 71 is a store and Bell Place is residential and it will stay this way, the previous owner also had this set up. She is not planning on having any commercial on the Bell Place side as it is not ADA compliant as there is a step down to get to this area. She then stated this will be two and a half

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stories and not three stories as previously stated. Mr. Kennedy noted there also is residential on the first floor, on the Bell Place side and asked the size of the commercial area, Ms. Kennedy was not sure so it was decided to get that information from the architect; right now that commercial space is vacant, it was a dress shop. Mr. Kennedy asked if there are dedicated spaces for the commercial use and Ms. Kennedy said yes, there is a parking lot on the Route 71 side but it can be used by anyone in the building. Mr. Kennedy then asked about the residential use on the first floor, the square footage and Ms. Kennedy said she thought it was about 900 square feet for the commercial use and about 900 square feet for the residential use. Mr. Kennedy then asked what was on the first floor for residential and was told the entrance is there and goes to a living room & kitchen, the upstairs part of that apartment has 3 bedrooms and 2 bathrooms and this is where she and her sons live. For the proposed apartment on the second floor and half-story there will be 2 bedrooms and 1 bathroom.

At this point questions were open to the Board members and there were none so it was opened to the public for questions and Peter Fittin, owner of the commercial building next door on the corner came forward and was sworn in. He had no problem with the plan but wanted verification that there will be 3 floors of living space and was told the Architect will answer that. He then said he has a problem with the parking, people use his parking area and Mr. Kennedy had to stop him to explain that this time is for questions only, he will have time later on for comments but should listen to all the testimony given first.

Mr. Casey then asked if there are any existing variances on this property that have been applied for in the past and Mrs. Brisben said both she and Mr. Willms had looked through the files and there were no variances from the past. Ms. Kennedy said she was told the original building was from the last 1800s and the building was added onto in the 1980s.

Megan Schnurr then came forward and was sworn in, giving her address as 704 Crescent Place. She, too, was concerned with the parking as there is commercial use and residential use at the site and was wondering about the occupancy, she too, was interested in hearing that testimony as people do park on Crescent Place for this building. She asked about the correlation with the CO and parking. Mr. Kennedy said that the testimony will get to that.

As there were no more questions that portion of the hearing was closed and Mr. Paul Damiano, Architect, came forward and was sworn in giving his address as 1721 Beverly Avenue, Spring Lake Heights. He has been a Licensed Architect in New Jersey for 30 years, for the past 25 years he has had a 2-person firm in Spring Lake Heights and has been in front of this Board maybe 7-8 times as well as other Boards. He was accepted as an expert witness and Mr. Avakian has worked with him many times and agreed.

Mr. Damiano referred to Exhibit A-3, the existing plans and showed the first floor entrance to the apartment on Bell Place and explained the rooms on the first and

second floors; he said the commercial space is in the front of the apartments on the highway side. From one of the bedrooms there is a step up to a ½ story space and he was surprised at how much room there is up there. He then turned back to Exhibit A-2 which shows the proposed apartment use and noted that there will be a barrier free ramp put in on the commercial side along with a barrier free bathroom, total 819 square feet. They are going to put in new stairs to the new apartment from the inside of the garage to the half story area. What they propose is the front half of the building staying commercial, the rear half will be part of the one residential unit that is two stories and the upstairs will be apartments which include the new one over the garage. Mr. Damiano said, after reading the Ordinance, that there is a nonconformity as part of the apartment is on the first floor but it can stay and be grandfathered in with no issue as long as it is not being expanded, and it is not, this is why they questioned the need for a Use Variance as they didn't think it was due to the way the Ordinance is written, but he deferred to the Board Engineer on this point.

Mr. Damiano then told the Board this lot has two fronts, one of the highway and one on Bell Place and, the way it is written, the smaller part is considered the front and the larger is the rear; they have 10 feet on the south side and 3.9 feet at the triangular part that is 2 feet x 10 feet on the side and that is what does not meet the 6 foot side yard setback. They had room on Route 71 so thought they could put dormers on the second floor but decided not to as the view would be the highway so they are putting dormers on the Bell Place side as that will have a view of the park. The setback to the open porch here is 17 feet and they are proposing 22 feet and 24 feet at the dormers on the half story and proposing a balcony at 17 feet. The Site Plan shows a hatched area that shows the new space and roofline. The Half-Story Ordinance is basically 50% or less of the second story, so his calculations come to 837 square feet for the new area which conforms, it comes to 45.7% where 50% is permitted.

Mr. Damiano then spoke about the parking, the requirements are 2 per unit so 4 parking spaces are needed for the residential units and for the commercial space it is 800 square feet of that space requires 1 parking space, so they need 2 spaces for the commercial use and really have 7 spaces including the barrier free one. There is a problem with nonconformance due to a fence and landscaping in this area, 18 inches for the fence and then 17.6 feet to the property line which means cars hang over the property line. The actual paving is 17.6 plus 1.6 feet and he showed the difference from the 1979 photo and the building addition done in 1985. He then mentioned the dentist's office next door to the south and this aligns with that. As far as the building to the north, some of the walkway is on that property and that paving needs to be picked up and brought closer to the garage. He explained there is room needed here for the stair to go up and showed this on the red triangle that is shown on the plans in the setback area. Mr. Damiano said the proposed ridge will be about 9 feet higher than what is there now and he explained how the stairs will work inside the garage to the new apartment. A question was asked about square footage and Mr. Damiano said that all together it is 2,388 right now and the addition over the garage is 350 square feet but combined with the half-story space there now it will be 1,173 square feet.

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Mr. Damiano then went through Mr. Avakian's report to the Board and started with item "H" on page 2 regarding the rear building setback. He said the building is not closer to Bell Place than either building on either side and he again explained about the proposed dormers, two at 24 feet and 2 at 22 feet. Item "I" was then addressed on side yard setbacks; Mr. Damiano said they are 10.9 feet on the south and 3.9 feet on the north where the addition over the garage will be, an expansion of an existing nonconformity but this is not the entire side yard, just the triangle area. As far as item "J" and building height, Mr. Damiano confirmed that the existing building height is 31 feet from the crown of the road and that is not changing. Item "K" is talking about the half story and he had already gone over that and said there is no variance for the half story as they comply, however, there is a minimum slope of 30% needed and they have 26.5%, so it is 3.5% shallower than permitted. Mr. Shaw asked Mr. Damiano about the Use Variance aspect of this application and Mr. Damiano repeated what he had said earlier, they are not expanding the first floor apartment which is grandfathered in and he did not think a Use Variance applies.

Mr. Shaw then referred to item "L" which addressed parking. Mr. Damiano said he had already addressed this, the code requires 10x20 feet and the parking there has been in place since 1979, they actually have 19 feet from the fencing and they need 20 feet; they can't go out any more to get to 20 feet. The next was item "N", number of parking spaces needed and this, also, was gone over earlier – 1 space for each 600 square feet of gross floor area for commercial and 2 spaces per apartment, so they need 2 spaces for commercial & 4 spaces for the apartments and they have 7 parking spaces so they comply.

As their testimony was done, it was time for Board questions and Mr. Casey asked Mr. Damiano to address item "M", mechanical equipment. Mr. Damiano went to the Site Plan and showed where 2 units are now and they are going to add a third there and screen it, as there are two fronts on this property they felt it was best to put the new one there with a 3-foot fence and arborvitae, this is shown on the plan and can be seen behind the garage area with the note "add a/c unit". Mr. Britt asked if any of the new addition will be closer or farther away from the existing property line and Mr. Damiano said all is within the existing footprint, they don't meet the Ordinance for the dormers or the existing triangle area and he showed this on the plan. Mr. Britt then asked about the new addition over the garage, is there a height question, he wasn't sure how to think about this. Chairman Hall asked Mr. Avakian if the garage was included in the building coverage and it was so there is not an issue and Mr. Avakian agreed that the footprint stays the same. Mr. Casey asked for clarification that if nothing is above the garage it does not count but if something is built over it, then it counts in coverage and Mr. Avakian said that is for residential and this is not considered residential, this is calculated by Ordinance; the building coverage is defined after the setbacks are met in the Commercial Zone, the garage is included and nothing is being bumped out.

Mr. Ward then asked if the existing garage is used as a garage or not and Ms. Kennedy answered and said it is a two-car garage; Mr. Ward then asked if the stairway going in will change this and the answer was yes, there will be room for one car. Mr.

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Ward then felt there is room behind the garage and, if one is being taken away can there be another space put in? Mr. Damiano offered the comment that there is a wide two-car garage door but there is a tree in the driveway so they counted one car in the driveway and one in the garage. He felt they could make the driveway wider but noted they already meet the spaces needed. Mr. Ward understood that but felt it could be helpful if, as they are taking away a space, they can make another space for the tenants, he felt it would be better for the community. Mr. Casey asked how much unfinished attic space is there and Mr. Damiano said they finished everything that was 5 feet or higher.

As there were no more questions from the Board the hearing was opened to the public for questions and Megan Schnurr came forward and asked if it was accurate to say they only needed 6 parking spaces? Mr. Avakian answered and said yes, based on the calculation, 6 spaces meet the code plus there is one barrier-free space for handicapped accessible, which means a van can park there and have enough space for handicapped use with no barriers. Next to come forward was Peter Fittin and he asked about the half-story addition, he was confused, is it now three floors? Mr. Damiano said it is considered a half-story but it will have dormers facing the rear yard on Bell Place. Mr. Fittin asked if the ridge beam will be the same and Mr. Damiano said yes, he was surprised as to how much space there was in the attic. Mr. Fittin then asked how many bedrooms will be in the new apartment and was told 2; he then asked how many in the other apartment and was told 3. Mr. Fittin commented there will be 5 total bedrooms in the building and 800-900 square feet of retail space and Mr. Damiano said yes. Mr. Fittin said they mentioned a doctor coming in and Mr. Damiano said a doctor is interested in the commercial area but they are not increasing the commercial space. Mr. Fittin said he has turned people away from having a business in his building as there would be too many cars coming in for their business, his concern is parking and he saw more parking for a doctor's office and an added apartment. Mr. Damiano said this has been a commercial use since 1985. Mr. Fittin then asked about the width of the garage door and Mr. Damiano said 16 feet. Mr. Fittin felt this will look nice and enhance the neighborhood but he and others in the area are concerned with the parking and congestion. Mrs. Brisben then asked Mr. Fittin about the new apartment that will be going up right behind his building and did that bother him and he said no, his only concern would be if there were to be spotlights there.

As there were no more public questions the Board Engineer, Peter Avakian spoke to the Board and public. He started by confirming that apartments are not to exceed two per lot and the first floor apartment is not conforming but Mr. Damiano made very convincing testimony that the original building was built in the 1890s, the residential space on the first floor has been there a long time and the Ordinance says it can stay as long as it is not expanded. There are changes being made to the building but they are positive as they are eliminating access between the retail and residential and there are no bedrooms on the first floor. The Board has to consider this and decide if it is not a Use Variance being requested; after hearing the testimony he did not think this was a Use Variance as the continued of the nonconforming apartment is allowed under the Sea Girt Ordinance. The existing setbacks of the building are not being changed, the

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setbacks variances show that the building is set closer to the property lines than the Ordinance allows and the proposed half story is compliant so there is no variance required for that. He was a little confused on the roof pitch as that is a little less than what is required but that is not changing. He agreed with the location of the mechanicals, they are in the front yard but are screened and are probably the most appropriate location for this. On the parking, he noted the town does not have jurisdiction over any parking that goes over the property line, this is on a State highway and this may want to be addressed with them. As far as the parking spaces, they do comply, both for commercial and residential, along with one handicapped space.

Mr. Shaw said he will check with the State; he also commented there was some talk of bringing in a Planner but after the testimony he didn't think it was necessary, this is up to the Board. Chairman Hall said this is not a Use Variance anymore, and Mr. Avakian agreed that this seems a little less of an issue, Mr. Damiano went through the plans and explained that the first floor apartment was not being expanded so Mr. Avakian felt the testimony had been clear on this. No building footprints are being changed so this is a little easier to accept the improvements and he did not see the need for additional testimony through a Planner as it had all been addressed this evening. Mr. Shaw agreed and summed up the application by stating that there are variances being requested but this will be a plus for the area and the owner is a Master Gardener so the building is aesthetically pleasing, he asked that the application be approved with the variances requested.

The Board then went into discussion and Mr. Casey asked Mr. Avakian if adding another mechanical unit in the front yard needs an additional variance and Mr. Avakian said yes and it was stated that this is the most appropriate site for this. Mr. Casey noted the architectural plans were hard to read but he was in favor of the application. Mr. Britt heard the design and parking issues and felt the applicant was helping make this a viable commercial property. He felt the design was aesthetically pleasing and commented that parking is a problem wherever there is commercial use and this should not be held against the applicant, he was in support of approval. Mrs. Brisben appreciated hearing all the testimony, especially from Mr. Fittin as she felt the proposed apartment was really close to this building and as long as he was okay with it, she was for this application, it will enhance the building and be better. Mr. Ward echoed the comments made but felt common sense and government rule here diverge, only 2 parking spaces for commercial use defies logic, he suggested limiting the commercial use to 5 o'clock and have room in the back for the residents. Mrs. Laszlo said that, based on the testimony and Mr. Avakian's comments, she was in favor of the application. She felt the parking case has been made, they are in compliance and there should be as much green space as is there now, keep it the same. Mr. Walker agreed with the others and had no problem with the requested variances. Chairman Hall said he was in line with everyone else.

Mr. Kennedy was asked to comment and he first said, as this is now not a Use Variance, he apologized to both the Mayor and Councilwoman for not being able to take part, but this was not known until the testimony was given. He then went over the

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conditions – compliance with all the testimony given, complying with current ADA requirements, compliance with Mr. Avakian’s review, a 24 month time for improvements, obtaining outside approvals, the normal boilerplate that is in Resolutions that the applicant stick within the confines of the approval, compliance with the half-story Ordinance, roof pitch an existing nonconformity, screening mechanical equipment in the front yard area and maintaining it, testimony was it will be a three-foot fence and arborvitae around it, no adverse lighting spill-over, and a suggestion to hear from the State on the parking encroachment. Those were the conditions but Mr. Kennedy wanted the Board to have a discussion on the possible additional parking. Chairman Hall noted they already have one additional spot but Mr. Ward felt that, in trying to make the commercial area more viable, there maybe can be one more spot put in. Ms. Kennedy came forward and said there is a rosebush right by the driveway that cuts in and that can be moved back and then there may be one more space and it can be a two-car driveway with additional blacktop; she gets two cars there now but it is tight. Mr. Damiano added the existing driveway is 18 feet wide and if they take out the rosebush they can add some more room and go for 20 feet wide which would be conforming to the Ordinance. Mr. Kennedy stated this changes the parking then, instead of having 7 spaces they will now have 8, along with a space inside the garage, where 6 is required. Mr. Shaw was agreeable to all the conditions noted.

At this time Mrs. Laszlo made a motion to approve the application with all the conditions that Mr. Kennedy so eloquently described, this was seconded by Mr. Walker and then by the following roll call vote:

Ayes: Karen Brisben, Tom Britt, Jake Casey, Eileen Laszlo, Robert Walker, John Ward, Norman Hall

Noes: None

OTHER BUSINESS:

Mr. Casey then came forward to address the Board on the Ordinance Review Committee’s report. He had 3 things to review tonight and he started with the Driveway Ordinance Review; this is related to the letter the Planning Board received from Chris Willms back in December 2021, he had a number of issues with driveways. Mr. Casey started with a conflict between two chapters, one is a 14 foot wide opening in section 17.2 in definitions for driveways and also in section 21-3.1 has a width opening limited to 13 feet, this is difficult for Chris to enforce due to this difference. The recommendation from the Committee is to change this all to 14 feet, The next thing to look is in section 21-3.1 and he read “no more than one driveway shall be permitted on any plot having a street frontage of 75 feet or fraction thereof.” It says you can have more than one driveway if you have more than 75 feet. The recommendation is to eliminate the wording after the word “plot”, this also found in 21-3.1. He then went to section 17-2 where it says one driveway per “lot” and then back to 21-3.1 which says one driveway per “plot”, they have to figure which word to use, lot or plot, they shouldn’t be using different ones. Chris also had a concern about not having a separation

between driveways that are adjacent to each other and Mr. Casey noted the Mayor also had this concern and the recommendation from the Ordinance Committee is there should be a space between adjacent driveways. This recommendation was written up by Councilwoman Richman and Chris Willms and Mr. Casey thanked them both for their work. There also needs to be some delineation between where a driveway is and where a back yard is, the town allows so much paving to be put in those areas it was felt there should be a limit on the pavers, or a barrier, a color difference, some level of demarcation so people aren't driving into the back yards, especially if there is a pool. The last item Mr. Casey spoke of on this matter was the need to have the driveway connect to the garage from the street and that the materials used for the driveway are appropriate to support a vehicle. Mr. Casey then asked if any Board member had any questions. Councilwoman Anthony asked if they decided to use the word "lot" or "plot" and Mr. Casey explained that the Committee writes their ideas and recommendations down and then Mr. Avakian, Mr. Willms and Mr. Gant, Administrator, do the wording for the Ordinance. Councilwoman Anthony asked if any of the Board members have a thought on this and it was felt that the 3 professionals can do this. Mr. Casey added the Professionals have the expertise on the proper definitions, etc. to do the crafting of the Ordinance.

Mr. Ward asked about an 8-foot driveway and how does that work when 10 feet is needed for a parking space. Mr. Casey said that Councilwoman Richman made the recommendation for 9 feet with one foot off the property line but it was decided to leave room for drainage so they went with 8 feet. The State of NJ has 8.5 feet for parking a regular size car, 7.5 feet for an economy car so 8 feet doesn't seem too bad for a driveway and would allow for landscaping. Mrs. Brisben then asked if one doesn't have an eight-foot wide driveway are they noncompliant now and the answer was yes, there is no minimum size today and they want to create the minimum of 8 feet wide. Chairman Hall asked if Mr. Casey had an idea on how many homes have less than an 8 foot wide driveway and Mr. Casey did not know.

Mr. Casey then asked for a vote on adopting the recommendations and all present voted yes to adopt the changes: Mr. Walker, Mrs. Laszlo, Mr. Ward, Councilwoman Anthony, Mr. Britt, Chairman Hall, Mrs. Brisben (Mayor Fetzer, who was on Zoom, had left the meeting by this time). Mr. Casey said he will give all this to Chris Willms, Peter Avakian and Jim Gant.

Mr. Casey then addressed the Dormer Definition Ordinance Suggested Change, they came before the Board in November with the half story edits that were proposed and approved; they then wrote comments on the Ordinance and sent them to Chris who responded sometime in January and felt there is an awful lot in the half story, there is roof pitch, decorative half-story structures on top, dormers and the half-story calculation. Mr. Casey said it was difficult to go through this so Chris wanted to go through simplicity of use here and separate these; one of the items was dormer definition and Mr. Casey read the existing Ordinance Definition from Section 17-2. "Dormer shall mean a projection from a sloping roof that contains a window which shall not exceed 10 feet in length....". The way this is written the question is "is it the dormer that exceeds 10 feet

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in length or the window?” The intent was for the dormer not to exceed the 10 feet but Chris has seen applications come in where the window is 10 feet and the dormer is bigger. The Committee made a change and the suggested wording is “Dormer shall mean a projection from a sloping roof which shall not exceed 10 feet in length....” And then at the bottom it will say “all dormers shall contain a window”. Mr. Casey is bringing this back to the Board for approval, the rest of what was approved in November is just having the language cleaned up for the Ordinance. He then asked for approval on this change and received a “yes” vote from all Board members left (Robert Walker had left the Zoom meeting at this point) namely, Mr. Ward, Mrs. Laszlo, Councilwoman Anthony, Mr. Britt, Chairman Hall and Mrs. Brisben. Mrs. Casey commented that, even though it is a few words that are changed, the Committee goes through a lot of discussion to get this done, what seems to be little takes a ton of discussion by a lot of people.

The last item for the evening from Mr. Casey was the Roof Pitch Ordinance changes. In order to make the half story make sense, they had to make another section to include roof pitch so they made that edit and Mr. Britt was asked to come to the podium and address this. He said this came up when Chris said a garage can have a flat roof and he struggled with the roof pitch in general. There are a number of inconsistencies, one was wording of degrees and wording of percents, these are two different things. Technically it is degrees and there is no requirement for a garage roof at all; what was assumed to be the minimum pitch on an accessory building turned out to be the maximum pitch and the maximum pitch, combined with the maximum height of the walls for the accessory building, was being used for the maximum height so there is not a maximum height in the code anywhere. The Committee wanted to have a consistent measurement and move all the references of slope to one area and have a minimum pitch of 30 degrees. Taking it out of the half-story definition and putting it into the general definition of building makes sense for roofing information. They also felt that allowing a little more leeway for garages for creativity was good and they want a 25 degree pitch for all accessory structures. They want to remove any references from anywhere in the Ordinance for roof and slope and put it in one place, Mr. Britt recommended putting in the building height definitions in Section 17-2. He also said they need someone to define the principal roof pitch because they are not saying all angles have to be 30 degrees, there are rafters to consider, and this also will allow for a little bit of creativity for dormers and connecting angles; Mr. Avakian can address the proper wording. Mr. Casey added that this was a concern back in 2021 when Chris wrote that letter to the Board. Mr. Britt said that, as of now, you can build a home with a flat roof as long as it is a two-story and Mrs. Brisben agreed as Chris has told her there are a few homes with a deck on the top of their home. Mr. Britt asked if any Board member was not in favor of pushing this forward and there was no response.

As there was no further business to come before the Board, a motion was made by Mrs. Brisben to adjourn, this seconded by Mrs. Laszlo and unanimously approved, all aye. The meeting was adjourned at 9:24 p.m.

Approved: April 19, 2023

Karen S. Brisben, Secretary

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