

BOROUGH OF DEAL

PLANNING BOARD/BOARD OF ADJUSTMENT MINUTES

November 4, 2020

A regular virtual meeting of the Planning Board/Board of Adjustment of the Borough of Deal was called to order by Chair Richard Cummings.

Richard Cummings asked everyone to salute the flag.

Michael Egan read the sunshine law, in conjunction with the "Open Public Meeting Law", p.l. 1975 C231, the notice required by this statute has been satisfied as per a resolution passed on December 5, 1997 at 8:00 P.M. at Borough Hall at a regular meeting of the Planning Board, Borough of Deal, Monmouth County, New Jersey. This meeting is a judicial proceeding. Any questions or comments must be limited to the issues of what this Board may legally consider in reaching a decision and decorum appropriate to a judicial hearing must be maintained at all times.

Roll Call of those present: Ruby Antebi, Nicole Cohen, Sam Cohen, Richard Cummings, Kathleen Jannarone, David Simhon, Max Zeevi.

Those Absent: Joe Cohen, Mandy Cohen, Richard Fetaya, Irwin Levine.

A motion was made by David Simhon and seconded by Richard Cummings that the minutes of the September 2, 2020 meeting be adopted.

Moved by: David Simhon

Seconded by: Richard Cummings

Roll Call Vote:

Those in favor: Richard Cummings, Kathleen Jannarone, David Simhon.

Those opposed: None

Those absent: Joe Cohen, Mandy Cohen, Richard Fetaya, Irwin Levine.

Those Not Voting: Ruby Antebi, Nicole Cohen, Sam Cohen, Max Zeevi

Prior to the first item on the agenda an announcement was made by attorney Jennifer Krimko that the 9 Monmouth Terrace application scheduled for tonight will not be heard and will be carried to the December 2, 2020 meeting without further notice.

Note: Richard Cummings and David Simhon step down from the 6 Roseld Court application as they own property within 200 feet of the applicant.

The first item on the agenda is 6 Roseld Court, Block 35, Lot 17, Edmund Nahum. Applicant is proposing an in-ground pool with a patio. Attorney for the applicant, David Esses.

Enter into evidence:

A-1 Pool Variance Plan by Martin G. Miller, Professional Engineer, dated 12/19/2019.

A-2 Google Overhead photo of subject property

A-3 Location Survey by Rodolfo Pierri of Shark River Land Surveying, dated 8/15/2019.

B-1 Engineer review letter by Leon S. Avakian, Inc. dated August 24, 2020.

David Esses, we have a single family dwelling, with a shed and driveway, we are proposing an in-ground patio with a pool, we are in a residential district, we have taken note of Avakian's letter and are willing to comply with the Board's requirements to the extent necessary and that our variance be permitted.

Kathleen Jannarone, are you done with your proposal and any comments from the board?

David Esses, at this time we would accept comments from the board.

Kathleen Jannarone, impervious coverage is increased by over 6%. I think it is obvious that this property is too small and narrow for a pool. It is not a reasonable variance request.

Sam Cohen, what other homes does this impact?

Kathleen Jannarone, it is a 60 x 100 lot and certainly the pool would impact the neighbors. The setback are 5 feet and the Ordinance is 30 feet. This is not a reasonable request.

David Esses, I would point out that that there is no rear neighbor and if you look at the aerial view there are other houses and it is common for the neighbors to have pools. There are other Municipalities that would recalculate and would not count the pool and water as impervious coverage. The issue in respect that there is a problem with the pool, the fact it is a pool would alleviate that.

Kathleen Jannarone, the impervious coverage is increasing from 33% to 39.3%. Is that not correct?

David Esses, that is correct but my point is that there are other Municipalities that will not calculate the pool as impervious coverage.

Kathleen Jannarone, yes but this Deal and we have our Ordinances.

Erik Anderson, I believe this letter came out before there was a change in our Ordinance. Isn't the maximum impervious coverage now 40%.

Stephen Carasia, that is correct. It was updated probably after the advertisement. We adopted the Ordinance in June and the advertisement for 20 days adoption period, it probably would have been on about 4-5 days after the application was put in. It's real close but we did update it to 40%.

Erik Anderson, technically no variance is required.

Kathleen Jannarone, we need correct information.

Stephen Carasia, it is correct. The Ordinance changed 3-4 days after the application. Currently it is now 40%.

Ruby Antebi, generally the board wants to make the residents happy, we want upgrades, we want renovations, at the same time we have a plan. It is not really the impervious coverage that we are really concerned about and I am not concerned about the rear yard setback either, I am very concerned however about the side yard setback. Every case is generally different but giving a side yard setback of 5-6 feet, it's almost egregious to ask for it. Generally if you really want a pool and I am looking at the plan now, I think the best thing you could do is get rid of the wood frame shed, get rid of the pavement driveway, center the pool, come back to us when the side yard setbacks are a little more tolerable and I think we should re-visit the case.

Kathleen Jannarone, very good points.

Nicole Cohen, I agree.

Sam Cohen, I agree with that also.

Ronit Nahum, 6 Roseld Court, I respect your view and I think it's a wonderful idea. I just want you to understand that my husband has been a Rabbi in the community for over 40 years and happen to be we really want a pool and are very religious and can not go to the pool because we are religious and what happen to be my husband got sick and the healing is the exercise is the water. There is no place I can go take my husband as a Rabbi in the private way the Rabbi needs. I really like your ideas and will try to change the plans and my Husband has served the community and has the right also to do it in the right and safe way. God gave me a small house and I have to make it happen. My husband legs never woke up from the Covid. We have rules but Covid 19 has changed everything. We will try to come back with a better plan.

Sam Cohen, we will do what we can and we all appreciate what the Rabbi does for the community but this is a different venue, it's the government. I think Ruby Antebi has given you a very good suggestion. We are willing to overlook the back because there is nothing in the back but being so close to your neighbors would be an issue for the rest of the town.

Kathleen Jannarone, you may want to consider reducing the size of the pool.

Erik Anderson, we will carry the application with out further notice and waive the time for the Board to act.

Linda Massry, neighbor at 4 Roseld Court. I will tell you the truth. The house was built and I didn't give any disapproval of them building a large house on a small lot. If they needed a

variance, we didn't object. It is an oversized house and looking back maybe I should have objected, a small lot will create more people and more noise. I didn't. Right now if there is a 30 foot setback on each side, that is written and no one would need a variance.

Erik Anderson, they are revising their plans and technically the public section comment process is not open yet. So maybe a suggestion would be the Counsel for the applicant to speak to you offline and get some collaboration on what is going to occur.

Linda Massry, I understand but it is still going to be very noisy. Are we going to be notified for the next meeting?

Erik Anderson, you are not going to get another notification, the next meeting will be December 2, 2020.

Note: Richard Cummings and David Simhon rejoin the Board for the next application.

The next item on the agenda is 2 Pleasant Place, Block 3, Lot 1.01, Touvia Assis. Applicant is proposing an in-ground swimming pool with a paver edge. Attorney for the applicant, Jennifer Krimko.

Enter into evidence:

A-1 Plot Plan by David Boesch of Nelson Engineering dated 8/28/2020, revised 9/16/2020

A-2 Survey by Robert Morris of Nelson Engineering dated March 26, 2020

A-3 Google street view of subject property

A-4 Attorney notice letter dated October 22, 2020

B-1 Engineer review letter dated October 27, 2020 by Leon S. Avakian, Inc.

Jennifer Krimko, we are here for a pool. It is a quite unique lot. It is a triangular shaped and backs up to the railroad tracks. The subject property has no rear yard. We are proposing to put the pool in the only open area. It is important to note that there is no neighbor impacted to the right, in the rear are railroad tracks and the only neighbor that would be impacted is up against a garage and driveway. There is also an existing hedgerow of evergreens. I would like to call David Boesch. The only variances we are seeking is with regard to rear yard and side yard. The side yard that we are seeking to the south is 16.7 feet and the rear yard is 19.9 feet.

David Boesch, a licensed Engineer. A-1 Plot plan, it is a very irregular property. It is only 36 feet in depth from Pleasant Place, railroad right of way and is 197 feet wide North to South and 133 feet in depth at the Southern property line. The only available open space is that Southwestern corner.

Jennifer Krimko, because of where the existing house is legally existing there is effectively no real usable rear yard? Correct?

David Boesch, Correct. The setback line is only 14 feet from the Railroad right of way to the rear building setback line. The available open space is the Southwestern corner.

Jennifer Krimko, the pool equipment and the fence would all comply?

David Boesch, Yes, we are only providing for a 3 foot paver edger around the pool itself.

Jennifer Krimko, the pool is about 17 feet from the South property line.

David Boesch, 17.6 feet from the South and 19.9 from the Railroad right of way.

Jennifer Krimko, from the Railroad right of way, there is no house on the other side of that?

David Boesch, it is the substation located immediately on the other side of the Railroad.

Jennifer Krimko, as far as any impact to the neighbors to the South, it is actually not up against any usable portion of their rear yard or their house it's adjacent to their garage and driveway.

David Boesch, the driveway is actually a little further back, the remainder of their side yard is occupied by their driveway.

Jennifer Krimko, if we were to put this on the west side, it would be in the front yard setback and have an impact on the front yard. In your opinion as a designer, is this in the least obtrusive

and the least impactful location as it relates to the public right of way and the only neighbor adjacent to it?

David Boesch, I would agree with that assessment.

Jennifer Krimko, in your opinion, is there any negative impact to grant the variance?

David Boesch, in my opinion, there is not.

Jennifer Krimko, would the applicant have a hardship to fit a conforming pool if the Ordinance was strictly applied?

David Boesch, absolutely, the unique shape of the property is the driving force in the variance being requested.

Jennifer Krimko, In your opinion, will this pool have a negative impact to the Railroad station, to the neighbor's garage and driveway?

David Boesch, no it will not.

Jennifer Krimko, open to the Board for questions.

David Simhon, what about the basketball court?

Jennifer Krimko, we are not constructing a basketball court, it already exists.

David Simhon, what is the impervious coverage?

Jennifer Krimko, it is 37.72%.

Kathleen Jannarone, the coverage is going from 29.3 to 37%.

Jennifer Krimko, the board can't require someone to have less than, it doesn't matter if it increases, as long it is under the maximum.

Kathleen Jannarone, it does have a basketball court and a volleyball court.

Jennifer Krimko, the existing structures are not relevant to the variance we are seeking. If we were seeking a coverage variance, I would agree with you. The two variances we are asking for, rear yard to the railroad and side yard to a driveway have nothing to do with what's on this property. No one from the street will see the pool. It will be behind the Hedge row.

Ruby Antebi, was there a variance given for the Basketball court?

Jennifer Krimko, No that I am aware of, I think it has always existed there.

Ruby Antebi, the street view, was that a recent image, doesn't show a basketball court. How can we going to trust them that it is not going to be visible when the volleyball court is in plain sight.

Jennifer Krimko, we could certainly put the same row of trees along the front of the property up to the driveway so everything existing would not be visible from the street and it could be a condition of approval.

Richard Cummings, make the pool 15 feet wide and move closer to the house and guess what, take care of the side, the backyard is not an issue due to the hardship.

Jennifer Krimko, it's a safety issue, we want to have a walkway to get around the house.

David Simhon, how far from the house is the pool?

David Boesch, the pool is 7 feet from the wall of the house.

Jennifer Krimko, I am told by the applicant that the basketball court was there when they bought the house, the volleyball court is sand, so they did not know that it wasn't allowed to be there since the basketball court was there already. We could slide the pool closer to the railroad.

David Simhon, make the pool 16 feet and I think it would be a proper compromise.

Jennifer Krimko, make the pool 16 foot wide and move it back as far as we can. As far as the basketball court, we bought the house with it.

Nicole Cohen, it's really a bit of an eyesore as you drive down the block.

Jennifer Krimko, we have to comply with the Board Engineer and we would submit a landscape plan for him to review to make sure it is shielded. We would reduce the pool width to 16, we could make it 5 feet from the house instead of 7 and we would submit a landscape plan subject to the Board's Engineer review that the existing courts are shielded from the street.

Kathleen Jannarone, sounds good.

Richard Cummings, any comments from the public? None.

A motion was made by David Simhon to approve the application subject to the conditions discussed. Seconded by Kathleen Jannarone.

Moved by: David Simhon

Seconded by: Kathleen Jannarone

Roll Call Vote:

Those in favor: Nicole Cohen, Sam Cohen, Richard Cummings, Kathleen Jannarone, David Simhon

Those opposed: Ruby Antebi, Max Zeevi

Those absent: Joe Cohen, Mandy Cohen, Richard Fetaya, Irwin Levine.

Those Not Voting: None.

There being no further business, the meeting was adjourned.

Respectfully submitted;

Michael W. Egan

Planning Board Secretary