

BOROUGH OF DEAL

PLANNING BOARD/BOARD OF ADJUSTMENT MINUTES

June 3, 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: Mandy Cohen, Sam Cohen, Richard Cummings, Kathleen Jannarone, Irwin Levine, David Simhon,

Those Absent: Ruby Antebi, Nicole Cohen, Richard Fetaya, Max Zeevi

A motion was made by David Simhon and seconded by Richard Cummings that the minutes of the May 13, 2020 meeting be adopted.

Moved by: David Simhon

Seconded by: Richard Cummings

Roll Call Vote:

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

Those opposed: None

Those absent: Ruby Antebi, Nicole Cohen, Richard Fetaya, Max Zeevi

Those Not Voting: Irwin Levine

The first item on the agenda is the Resolution adoption for 25 Marine Place, Block 56, Lot 5, Janet Ashear Revocable Trust, approved at the May 13, 2020 meeting.

RESOLUTION

Whereas, Monmouth Realty Development, the record owner of the property has applied to the Planning Board of the Borough of Deal for a variance at the premises located at 25 Marine Place, Borough of Deal and known as Block 56, Lot 5 on the official tax map of the Borough of Deal which premises is located in the R-1 zone.

The Applicant is proposing an in-ground swimming pool with a patio, and a new driveway.

The property and dwellings have non-conformities with existing lot frontage, lot width, lot area and front and side yard setbacks. The development of a non-conforming lot/structure and variance for the location of pool equipment in the side yard requires Planning Board approval.

Whereas, the Board after carefully considering the evidence presented by the Applicant, the Applicant's expert and the comments, if any, by the general public, has made the following factual findings:

1. The Applicant is the owner of the property.
2. The Applicant presented the following exhibits:

A-1 Topographic Survey by Anthony F. Dirosa of TriState Engineering and Surveying, PC dated September 29, 2019.

A-2 Plot Plan by David H. Boesch, LLA of Nelson Engineering Associates, Inc. dated January 8, 2020 with a revision date of April 23, 2020.

A-3 Photo of the Front Street view of the house.

B-1 Engineer review letter by Leon S. Avakian, Inc. dated April 14, 2020, with a revision dated May 7, 2020.

3. The property has a total area of 11,250 square feet.
4. The existing lot contains a single-family dwelling, with a detached garage.
5. The Applicant is proposing an in-ground swimming pool with a patio, and a new driveway.
6. The minimum lot area permitted is 18,750 square feet per the R-1 Zoned Districts. The existing lot area is 11,250 square feet, which represents an existing non-conformity.
7. The minimum lot frontage permitted is 150 feet per the R-1 Zoned Districts. The existing lot frontage is 75 feet, which represents an existing non-conformity.
8. The minimum lot width permitted is 150 feet per the R-1 Zoned Districts. The existing lot width is 75 feet. This represents an existing non-conformity.
9. The minimum front yard setback permitted is 50 feet or average alignment of the existing buildings within 200 feet of the lot per the R-1 Zoned Districts. The existing front yard setback is 40.56 feet, which represents an existing non-conformity.
10. The minimum side yard setback permitted per the R-1 Zoned District is 20% of the lot width (15 feet). The existing side yard setback on the west side is 7.5 feet and the east side is 16.80 feet. The west side yard setback represents an existing non-conformity.
11. The minimum side yard setback permitted is 10 feet. The existing side yard setback of the garage is 1.92 feet. This represents a pre-existing non-conformity.
12. The minimum rear yard setback permitted is 10 feet. The existing rear yard setback of the garage is 1.25 feet. This represents a pre-existing non-conformity.
13. The pool equipment should be located in the rear yard and have a side and rear yard setback of 10 feet. The Applicant is proposing the pool equipment be placed in the side yard, which is 12 feet from the property line. **A variance is required.**

Whereas, the Board has determined that the relief requested by the applicant can be granted as presented without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan of the Borough of Deal.

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Deal on the 13th day of May 2020 that the application is approved subject to the following conditions:

- (1). The Applicant shall comply with all promises, commitments and representations made at or during the Public Hearing Process.
- (2). The Applicant shall comply will those applicable terms and conditions of the Leon S. Avakian review letters dated May 7, 2020.
- (3). A general note should be added to the plan indicating the existing curb and sidewalk along the frontage will be replaced if found in poor condition.
- (4). The Applicant shall be strictly limited to the plans which are referenced herein

and which are incorporated herein at length. All construction shall comply with prevailing provisions of the Uniform Construction Code.

(5). The Applicant shall obtain all approvals necessary for this project.

(6). The Applicant shall in conjunction with appropriate Borough Ordinances pay all appropriate/required fees and taxes.

(7). Any future improvements will require Planning Board Approval.

(8). The Applicant will not direct stormwater and/or runoff from the property onto adjacent properties.

(9). The grading plan and landscaping plan of the Applicant shall be subject to the review and approval of the Borough Engineer.

Moved by: Sam Cohen

Seconded by: Richard Cummings

ROLL CALL VOTE

Those in favor: Ruby Antebi, Mandy Cohen, Nicole Cohen, Sam Cohen, Richard Cummings, Kathleen Jannarone, David Simhon, Max Zeevi

Those opposed: None

Those absent: Richard Fetaya, Irwin Levine

Those not voting: None

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Deal on the 3rd day of June, 2020 that the Resolution of be adopted.

Moved by: Sam Cohen

Seconded by: David Simhon

ROLL CALL VOTE

Those in favor: Mandy Cohen, Sam Cohen, Cummings, Jannarone, Simhon

Those opposed: None

Those absent: Antebi, Nicole Cohen, Fetaya, Zeevi

Those not voting: Levine

The second item on the agenda is the Adoption of the Resolution for 2 Candy Lane, Block 2, Lot 2, Joseph and Sharon Hanin, approved at the May 13, 2020 meeting.

RESOLUTION

Whereas, Joseph and Sharon Hanan, the record owners of the property have applied to the Planning Board of the Borough of Deal for an approval of the construction of an in-ground pool at the premises located at 2 Candy Lane, Borough of Deal and known as Block 2, Lot 2 on the official tax map of the Borough of Deal which premises is located in the R-2 zone.

The Applicant is proposing an in-ground swimming pool with a patio. The Applicant is removing a portion of the driveway in the rear yard of the property to allow for the swimming pool.

The property and dwellings have non-conformities with existing lot frontage, lot width and lot area. The dwelling has an existing non-conformity with the front and side yard setbacks. The development of a non-conforming lot requires Planning Board approval.

Whereas, the Board after carefully considering the evidence presented by the Applicant's attorney and the comments, if any, by the general public, has made the following factual findings:

1. The Applicant is the owner of the property.
2. The Applicant presented the following exhibits:

A-1 Pool Variance Plan prepared by William Jensen dated January 21, 2020, last revised January 30, 2020.

A-2 Survey prepared by Jeffrey Grunn dated November 7, 2019, last revised January 10, 2020.

B-1 Engineer review letter by Leon S. Avakian, Inc. dated April 14, 2020.

3. The property has a total area of 13,887 square feet.
4. The existing lot contains a two-story dwelling with a driveway.
5. The Applicant is proposing an in-ground swimming pool with a patio. The Applicant is removing a portion of the driveway in the rear yard of the property to allow for the swimming pool.
6. The minimum lot area permitted is 18,750 square feet per the R-2 Zoned Districts. The existing lot area is 13,887 square feet, which represents an existing non-conformity.
7. The minimum lot width permitted is 150 feet per the R-2 Zoned Districts. The existing lot width is 95 feet. This represents an existing non-conformity.
8. The minimum side yard setback permitted per the R-2 Zoned District is 20% of the lot width (19 feet). The existing north side yard setback is 14.5 feet which represents an existing non-conformity. The existing south side yard setback is 18.9 feet, which represents an existing non-conformity.

Whereas, the Board has determined that the relief requested by the applicant can be granted as presented without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan of the Borough of Deal.

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Deal on the 13th day of May 2020 that the application is approved subject to the following conditions:

- (1). The Applicant shall comply with all promises, commitments and representations made at or during the Public Hearing Process.
- (2). The Applicant shall comply with those applicable terms and conditions of the Leon S. Avakian review letters dated April 14, 2020.
- (3). A general note should be added to the plan indicating the existing curb and sidewalk along the frontage will be replaced if found in poor condition.
- (4). The Applicant shall be strictly limited to the plans which are referenced herein and which are incorporated herein at length. All construction shall comply with prevailing provisions of the Uniform Construction Code.
- (5). The Applicant shall obtain all approvals necessary for this project.

(6). The Applicant shall in conjunction with appropriate Borough Ordinances pay all appropriate/required fees and taxes.

(7). Any future improvements will require Planning Board Approval.

(8). The Applicant will not direct stormwater and/or runoff from the property onto adjacent properties.

(9). The grading plan and landscaping plan of the Applicant shall be subject to the review and approval of the Borough Engineer.

Moved by: Richard Cummings

Seconded by: David Simhon

ROLL CALL VOTE

Those in favor: Ruby Antebi, Mandy Cohen, Nicole Cohen, Sam Cohen, Richard Cummings, Kathleen Jannarone, David Simhon, Max Zeevi

Those opposed: None

Those absent: Richard Fetaya, Irwin Levine

Those not voting: None

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Deal on the 3rd day of June, 2020 that the Resolution of be adopted.

Moved by: Kathleen Jannarone

Seconded by: Sam Cohen

ROLL CALL VOTE

Those in favor: Mandy Cohen, Sam Cohen, Cummings, Jannarone, Simhon

Those opposed: None

Those absent: Antebi, Nicole Cohen, Fetaya, Zeevi

Those not voting: Levine

The Third item on the agenda is 113 Brighton Avenue, Block 24, Lot 11, 113 Brighton Ave Deal NJ, LLC. This is being carried from the February 5, 2020 meeting for revisions to the application. Attorney for the applicant, Robert Farber.

Enter into evidence:

A-5: Architectural Plan by Robert A. Hazelrigg, Architect dated June 27, 2019 with the latest revision date of May 5, 2020.

A-6: Plot Grading Plan by Charles Surmonte, P.E. dated September 15, 2019 with the latest revision date of April 10, 2020.

A-7: Revision Street view rendering of subject property.

B-2: Revised Engineer review letter by Leon S. Avakian, Inc. with a revision date of May 28, 2020,

B-3: Board affidavit by Mandy Cohen that she has listened to the recording of the prior meeting held on February 5, 2020 and is eligible to sit for this application.

B-4: Board affidavit by Irwin Levine that he has listened to the recording of the prior meeting on February 5, 2020 and is eligible to sit for this application.

Robert Farber, I will call Robert Hazelrigg.

Irwin Levine, can I make a comment on the drawing. We should be able to see how the building is looking on the property itself.

Sam Cohen, it is too big for that size lot.

Kathleen Jannarone, exactly.

Robert Hazelrigg, you have to remember what was said at the last meeting. People were concerned about a couple of things. One was the East side property line, which was on the right side of the building, we were continuing as the existing corner, we stopped and re-designed the entire building and shifted the addition so that it fits within the setback line.

Sam Cohen, the building coverage, the maximum is 25% and you are almost at 31%. You are expanding it from 27% to almost 31%.

Robert Farber, with regard to the lot coverage we are actually going down a little bit a percent.

Robert Hazelrigg, the addition now complies and we are removing the garage and improving the impervious and side yard setbacks. There was also some concern last time with building height. So, I redesigned the roof so it slopes away from the street and lowered the height substantially.

Kathleen Jannarone, it's still too high.

Robert Hazelrigg, because the building is so close to the front yard. We are at 10 feet and no matter what we do we are over the height.

Robert Farber, It's a small lot and already a large house. Based on the last meeting, we improved the setback and the overall lot coverage is going down. The roof design was actually lowered based on the suggestion of the Board at the last meeting.

Robert Hazelrigg, the only reason we are keeping the overall impervious coverage is so we can keep three cars in the driveway.

David Simhon, can we put a cement path with grass in between?

Robert Farber, would have to check with my client.

Kathleen Jannarone, when you look at the East side, the height, the building coverage and the impervious coverage. The house is too big for that lot. All four factors are not working.

Sam Cohen, I agree.

Robert Farber, the addition will not be visible from the road. It's merely an addition to the back. In terms of the roof, it is not doing anything with the height. At the last meeting the house was not too big or bulky. The concern was the side yard and we addressed that.

Kathleen Jannarone, let's not look at the last meeting and look at what we are looking at now. The house is too big.

Robert Farber, is there any addition that would be acceptable to the board.

Sam Cohen, it's just too large.

Robert Hazelrigg, we are conforming with the addition. We are leaving the existing ridge height. We are not making the house any higher than it is now.

Robert Farber, the back portion is permitted and there is no variance.

Irwin Levine, I am more concerned with the psychological effect.

Robert Farber, in terms of the psychological, I don't think that is recognized in zoning laws. I am concerned that we tried to address exactly the items that bothered everybody and am inclined to carry this and make some changes but if we do that and come back and then there is something else you don't like.

Sam Cohen, we all agree there is just too much building on too small a lot.

Robert Farber, if the Board is inclined, we will carry this and make some revisions.

Richard Cummings, are there any questions from the audience. None.

Robert Farber, I would like it noted for the record that there were no objectors at this meeting.

Erik Anderson, we will carry this with no need to re-notice.

The fourth item on the agenda is 232 Norwood Ave, Block 52, Lot 8, Evan and Ezra Hedaya. Applicant is proposing an attic floor with living space and replacing the front porch railing and roof. Attorney for the Applicant, Jennifer Krimko.

Enter into evidence:

A1 A boundary and topographic survey by Justin J. Hedges of Insite Surveying, LLC, dated November 14, 2019 with the latest revision dated February 24, 2020.

A2 Architectural Plans by Antonio Scalise of Parallel Architectural Group dated August 13, 2019 with the latest revision date of December 31, 2019.

A3 Street view rendering of the subject property.

B1 Engineer review letter by Leon S. Avakian, Inc, dated April 14, 2020.

Jennifer Krimko, we are working within the existing footprint of the home. We are looking at setback relief and reducing impervious coverage from 47% down to 44% and the only new variance is in regards to the height of front setback. The view from the street will not be overwhelming. The architect made an A frame roof line so it would be less imposing from the street. The only part that doesn't meet the ordinance is at the Apex in the front. He tried to minimize the impact from the street.

Sam Cohen, it fit's in much better than what is there now.

Jennifer Krimko, we will meet all conditions in Avakian's letter.

Kathleen Jannarone what is the building height of 50 feet at the ROW?

Jennifer Krimko, your ordinance is unique and has a maximum building height at the setback is basically 50 feet from the right of way or front property line. It can go up a foot as it sets back a foot and can go up a up to a maximum of 42 feet so your house needs to be 64 feet back at 42 feet high. I do have the Engineer and Architect if you have any questions.

Sam Cohen, I think it's good and it's a good improvement.

David Simhon, what is the depth of the A Frame roof line to the back?

Jennifer Krimko, 9.7 feet

Richard Cummings, are there any comments from the public? None.

Sam Cohen makes a motion to accept the application as submitted. David Simhon seconds the motion.

Moved by: Sam Cohen

Seconded by: David Simhon

ROLL CALL VOTE

Those in favor: Mandy Cohen, Sam Cohen, Cummings, Jannarone, Levine, Simhon

Those opposed: None

Those absent: Antebi, Nicole Cohen, Fetaya, Zeevi

Those not voting: None

The fifth item on the agenda is 104 Deal Esplanade, Block 51, Lot 3, Salim Alfaks. Applicant is proposing an addition to the East side and rear of the dwelling, an in-ground swimming pool with patio, cabana and raised patio. The plan indicates the existing garage is to

be removed. Attorney for the applicant, Jennifer Krimko. Note for the record: Board member Irwin Levine will step down from the board as he lives within 200 feet of the applicant.

Enter into evidence:

A-1 Topographic survey by Charles Surmonte, dated May 21, 2019.

A-2 Front Yard Setback Plan by Charles Surmonte dated December 30, 2019.

A-3 Color Rendering Street view of subject property.

A-4 Plot and Grading Plan by Marc S. Leber of east Point Engineering dated June 10, 2019 with the latest revision date of August 28, 2019.

A-5 Architectural Plan by Michael Saverese of Michael Saverese Associates dated September 25, 2019 with the latest revision date of January 6, 2020.

B-1 Engineer review letter by Leon S. Avakian, Inc. dated April 14, 2020.

Jennifer Krimko, this application has less non-compliance than the last one. We have a property that has a lot area that is undersized, the lot width is undersized and the side yard west setback is sufficient. What we are looking to do is to add-on to the existing footprint, expand the front porch, not increasing any of the existing non-conformities and the pool and pool house all fully comply. The plot Plan, A4. There is an existing 2 ½ story home and a front porch along the front. What's being added in the back-right corner is a one-story addition. All of the additions, except for the piece in the corner are fully conforming.

Kathleen Jannarone, on the west side which is only 3.58 feet, there is no neighbor there.

Jennifer Krimko, that 3.58 portion, that is an open porch. It is a conforming construction.

Richard Cummings, any members of the public have a question?

Saul Tawil, I have a major concern with the drainage of the water. I am the neighbor on the left side as you look at the house.

Jennifer Krimko, the board engineer has reviewed it for the grading and drainage and has recommended we change the grading to avoid runoff to the neighbors and soil logs to show that the drywells are working properly. We are going to comply with everything in the Engineer letter.

Saul Tawil, I understand but you are raising the topsoil for the pool, correct?

Jennifer Krimko, the pool fully complies.

Saul Tawil, I get flooded sometimes two feet in my garage.

Jennifer Krimko, we are agreeing that it will not direct into a neighbor's property, so any situation there now will be improved.

Sam Cohen, how high is the Cabana?

Jennifer Krimko, it's 10 feet.

Saul Tawil, How high the pool?

Jennifer Krimko, the elevation is 23 which means it's 23 feet above sea level. We are not changing any of the grade at the property line.

Saul Tawil, then I have a problem.

Jennifer Krimko, we do not have any problems with the variances and we are removing the garage which will help you a lot and none of the improvements will increase runoff to your property.

Saul Tawil, there is already runoff.

David Simhon, I am sure the drainage will be an improvement.

Jennifer Krimko, it will be because we are proposing drywells where they do not exist today. The way the lot is graded, it is graded that it drains to the west towards the vacant lot. We are improving the conditions through grading and drywells and whatever you have today will be made better.

Saul Tawil, better or worse?

Mandy Cohen, what it means is what we are discussing tonight is not going to make your property worse.

Jennifer Krimko, if you have an issue with my client, it is personal and the Board has no jurisdiction over that.

Erik Anderson, if there is a pre-existing condition with your property and you allege there is a nuisance, there are remedies for you outside of this Board.

Saul Tawil, what are my options?

Erik Anderson, I can not give you legal advice. The Board is called upon to review the variances and to determine if a variance should be granted, if there is an existing condition that you believe is impacting your property, there is a mechanism under the law for you to deal with that. That is unfortunately is not under the purview of this Board.

Saul Tawil, I would like to state my objection and do not agree and they should correct the situation.

David Simhon, any other comments from the public? None.

Kathleen Jannarone, maybe we should carry to review the drainage.

Jennifer Krimko, you have an application where the construction is not creating any new variances, we agree with all the Engineer recommendations, reducing existing non-conformities, there is really nothing to carry for.

David Simhon makes a motion to accept the application. Richard Cummings seconds the motion.

Moved by: David Simhon

Seconded by: Richard Cummings

ROLL CALL VOTE

Those in favor: Mandy Cohen, Sam Cohen, Cummings, Jannarone, Simhon

Those opposed: None

Those absent: Antebi, Nicole Cohen, Fetaya, Zeevi

Those not voting: Levine

The final item on the agenda is 46 Runyan Avenue, Block 34, Lot 3, Ralph and Vivian Sitt. Applicant is presenting the Dormer Construction. Attorney for the applicant, Jennifer Krimko. Note: Irwin Levine steps backs on the Board.

Erik Anderson, this is 46 Runyan Avenue. You may recall at one point there was a request to enlarge the Dormer previously the Board had approved the Dormer at 8.75 feet but the Dormer was not built not in conformance with that, a variance request was made, which was denied, a lawsuit was filed in Freehold, we engaged in settlement discussions, whereby the Board and the applicant agreed to a proposed settlement which everybody has already seen, voted on and approved. Under New Jersey Law, we need to have the applicant to come back before the Board essentially present what is being viewed through the settlement to give the public the opportunity to make any comments, lodge any objections, this is what is called a whispering woods hearing.

Jennifer Krimko, on behalf of the applicant, essentially what we are coming back with is a proposal to leave everything as it is. Not make any changes, the denial was to enlarge the Dormer, we are agreeing not to enlarge the Dormer and leave it as is. We were also hit hard by your attorney and part of the settlement was to pay his fees so there is no out of pocket cost to the Board. The settlement before you is in exchange for dismissing the litigation as well as paying your attorney fees, we will be entitled to leave the Dormer as is and did not need any variance relief anyway.

Erik Anderson, any questions from the Board on what I said or what Jennifer said?

Richard Cummings, I think we spoke about this last time.

Erik Anderson, are there any questions or comments or concerns from the public?

None.

Erik Anderson, you have already voted to approve the settlement, this is essentially to vote to approve that the Dormer will stay. To approve the Dormer as is.

Richard Cummings makes a motion to approve. Kathleen Jannarone seconds the motion.

Moved by: Richard Cummings

Seconded by: Kathleen Jannarone

ROLL CALL VOTE

Those in favor: Mandy Cohen, Sam Cohen, Cummings, Jannarone, Levine, Simhon

Those opposed: None

Those absent: Antebi, Nicole Cohen, Fetaya, Zeevi

Those not voting: None

There being no further business, the meeting was adjourned.

Respectfully submitted;

Michael W. Egan

Planning Board Secretary