

## **BOROUGH OF DEAL**

### **PLANNING BOARD/BOARD OF ADJUSTMENT MINUTES**

**March 3, 2021**

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: Sam Cohen, Richard Cummings, Kathleen Jannarone, Irwin Levine, David Simhon, Max Zeevi

Those Absent: Ruby Antebi, Joe Cohen, Mandy Cohen, Nicole Cohen, Richard Fetaya,

A motion was made by Kathleen Jannarone and seconded by Irwin Levine that the minutes of the February 3, 2021 meeting be adopted.

Moved by: Kathleen Jannarone

Seconded by: Irwin Levine

### **ROLL CALL VOTE**

Those in favor: Jannarone, Levine

Those opposed: None

Those absent: Antebi, Joe Cohen, Mandy Cohen, Nicole Cohen, Fetaya,

Those not voting: Sam Cohen, Cummings, Simhon, Zeevi

Robert Farber, attorney for 102 Deal Esplanade makes an announcement that 102 Deal Esplanade scheduled to be heard tonight will be carried to April's meeting due to a deficiency in the notice. He will be re-noticing for the April meeting.

The first item on the agenda is the adoption of the Resolution for 9 Monmouth Terrace, Block 71, Lot 2, 9 Monmouth Terrace Assoc., LLC.

Erik Anderson reads some modifications to the Resolution for 9 Monmouth Terrace, to be adopted.

### **RESOLUTION**

Whereas, 9 Monmouth Terrace, LLC, 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 9 Monmouth Terrace, Borough of Deal and known as Block 71, Lot 2 on the official tax map of the Borough of Deal which premises is located in the R-1 zone

The Applicant is proposing the construction of a 3-story single family dwelling with a swimming pool and driveway. The existing dwelling is to be demolished.

The Application for this matter was heard on 1/6/21.

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's case was presented by Jennifer Krimko, Esq.
3. Doug Widman, Esq. appeared on behalf of Mr. and Mrs. Falack (10 Hathaway Avenue).

4. Donald Pepe, Esq. appeared on behalf of Mr. and Mrs. Habert (8 Monmouth Terrace).
5. The Applicant presented the following exhibits:

A-1 Topographic Verification Plan & Street Utility Survey by Thomas J. Ertle, P.L.S. of French & Parrello Associates dated 8/22/2018 with no revisions.

A-2 Plot Plan by Keith B. Smith, P.E. of French & Parrello Associates dated 8/5/2020 with a revision date of 12/18/2020.

A-3 Architectural Plans by Jose L. Ramirez, R.A. dated July 9, 2019 with a latest revision date of 12/21/2020.

A-4 Street view rendering of subject property by J.L. Ramirez architect dated December 21, 2020.

A-5 Allowed Developable Area Map by French & Parrello Associates dated 8/27/2020

A-6 Front Yard setback plan by Keith Smith, P.E. of French & Parrello dated 10/26/20

A-7 Colorized version of Site Plan, page 3 of 7 by Keith Smith, P.E. of French & Parrello dated 8/5/2020 with a revision date of 12/18/2020.

A-8 Photo Rendering by Massa Multimedia Architecture dated 1/6/2021

A-9 Plot Plan Exhibit with easement and license areas shown prepared by French & Parrello Associates dated 1/5/2021.

A-10 Line of Sight from 8 Monmouth Terrace Exhibit by Keith Smith, PE of French & Parrello dated 12/15/2020.

B-1 Engineer review letter by Leon S. Avakian, Inc. dated September 24, 2020 with a latest revision date of January 4, 2021.

6. The property has a total area of 17,341 square feet.
7. The existing lot contains a two-story dwelling with deck and driveway.
8. The Applicant is proposing the construction of a 3-story single family dwelling with a swimming pool and driveway. The existing dwelling is to be demolished.
9. The permitted Minimum Lot Area is 18,750 square feet. Currently existing is 17,341 square feet which is an existing nonconformity.
10. The permitted Minimum Lot Frontage is 150 feet. Currently existing is 114 feet which is an existing nonconformity.
11. The permitted Minimum Lot Width is 150 feet. Currently existing is 114.7 feet which is an existing nonconformity.
12. The permitted Minimum Front Yard Setback (Monmouth Terrace) is 50 feet or average within 200 feet., which is 31.4 feet. Currently existing is 34.8 feet which is an existing non-conformity. Applicant proposes 20.5 feet. **A variance is required.**
13. The permitted Minimum Front Yard Setback (Hathaway Avenue) is 50 feet or average within 200 feet. Currently existing is 44.8 feet which is an existing non-conformity. Applicant proposes 37.8 feet. **A variance is required.**
14. The permitted Minimum Side Yard setback is 22.92 feet. Currently existing is 33.7 feet. Applicant proposes 42.1 feet.
15. The permitted Minimum Rear Yard Setback is 30.05 feet. Currently existing is 39.8 feet. Applicant proposes 21.5 feet. **A variance is required.**
16. The permitted Maximum Building Height at 50 feet from ROW (Monmouth

- Terrace) is 28 feet. Applicant proposes 29.5 feet at 20.5 foot setback. **A variance is required.**
17. The permitted Maximum Building Height at 64 feet from ROW (Monmouth Terrace) is 42 feet. Applicant proposes 42 feet at 30.0 foot setback. **A variance is required.**
  18. The permitted Maximum building height at 50 feet from ROW (Hathaway Avenue) is 28 feet. Applicant proposes 42 feet at the 73 foot setback.
  19. The permitted Maximum building coverage is 20%. Current is 16.58%. Applicant is proposes 19.9%.
  20. The permitted Maximum impervious coverage is 40%. Currently existing is 36.94%. Applicant proposes 40.53%. **A variance is required.**
  21. The permitted minimum side yard setback to a swimming pool is 30 feet. Applicant proposes 43.5 feet.
  22. The permitted minimum rear yard setback to a swimming pool is 30 feet. Applicant proposes 40.4 feet.
  23. A swimming pool may have 30% of continuous linear feet of the pool to be exposed for 18 inches from the top of the ground, and the remaining portion of the pool shall not be erected or maintained above ground, but shall be wholly at or below ground. The Applicant proposed exposed wall height of the swimming pool is over 8.2 feet. Additionally, the proposed continuous linear feet of exposed wall is 39%. **Variances are required.**
  24. The Applicant is proposing a retaining wall with a fence on top along the Hathaway Avenue frontage. The combined wall and fence height are approximately 12.9 feet (8.9 foot wall plus 4 foot high fence). **A variance is required.**
  25. Fences and walls located in the side and rear yards shall not exceed five feet in height above ground level. The Applicant is proposing a retaining wall with a fence on top along the east side of the property. The combined wall and fence height are 12.9 feet. **A variance is required.**
  26. Applicant has agreed to record a sight easement in favor of its neighbor, Habert (north side of the property). Said easement will ensure that nothing will be built, planted or constructed above a specified elevation of 29.1. This easement will guarantee Mr. Habert and the public's view to the ocean over the subject property as depicted on the approved plans in perpetuity. Said easement will be subject to Mr. Habert's attorney's review and recorded with the County prior to the issuance of any building permits.
  27. Applicant has agreed to record a sight easement in favor of its neighbor, Falack (North side of the property along Hathaway Ave). Said easement will ensure that nothing will be built, planted or constructed above a specified elevation of 29.1. This easement will guarantee Falack's and the public's view over the subject property as depicted on the approved plan to the ocean in perpetuity. Said easement will be subject to Falack's attorney's review and recorded with the County prior to the issuance of any building permits.

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 4<sup>th</sup> day of January 2021 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 1/4/21.
- (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). All landscaping/landscaping plans, if any, shall be subject to review and approval by the Borough's Engineer.

Moved by: David Simhon

Seconded by: Sam Cohen

#### ROLL CALL VOTE

Those in favor: Ruby Antebi, Nicole Cohen, Sam Cohen, Irwin Levine, Richard Cummings, David Simhon

Those opposed: Kathleen Jannarone

Those absent: Mandy Cohen, Richard Fetaya, Max Zeevi

Those not voting: Joe Cohen

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Deal on the 3<sup>rd</sup> day of March 2021 that the Resolution be adopted.

Moved by: Sam Cohen

Seconded by: David Simhon

#### ROLL CALL VOTE

Those in favor: Sam Cohen, Richard Cummings, Irwin Levine, David Simhon

Those opposed: None

Those absent: Ruby Antebi, Joe Cohen, Mandy Cohen, Nicole Cohen, Richard Fetaya

Those not voting: Kathleen Jannarone, Max Zeevi

The next item on the agenda is 11 Lakeview Road, Block 63, Lot 3, Mitchell and Estelle Betesh. Applicant is proposing a one-story addition connecting the dwelling and the existing garage and is also proposing a swimming pool and patio in the front yard. Attorney for the applicant, Robert Farber.

Enter into evidence:

A-1 Application dated January 11, 2021

A-2 Proof of Mailing dated March 1, 2021

A-3 Location Survey Map by Rodolfo Pierri of Shark River Land Surveying dated November 11, 2020.

A-4 Pool Variance Plan by William F. Jensen, Jr. of Jensen Design Group dated February 19, 2020 with the latest revision of December 11, 2020

A-5 Architectural Plans/Site Plan by Thomas Giegerich of Thomas Giegerich Architect dated March 23, 2020.

A-6 Photo rendition of addition to the garage.

A-7 Street view of Pool and fence surrounding pool

A-8 Rendition of Pool and Fence with trees placed in front of fence

B-1 Leon S. Avakian, Inc. engineer review letter dated February 17, 2021

Robert Farber, This is an very interesting case that presents a hardship. The lot is a pizza pie shape, it isn't squared it's more triangular. What that means that there is a whole lot of property that essentially is fronted by two streets, Lakeview and Monmouth Drive and it isn't all usable property. Applicant needs more space. My client simply wants to connect the garage to the house, put a laundry room in there, nothing major. What is interesting is that by connecting the accessory structure of the garage to the house it opens up a lot of issues by creating a lot of bulk variances that the factor are irrelevant but become relevant when connecting the garage to the house, the garage turns from an ancillary structure to a house. There is no coverage issue and the lot is non-conforming. The next item is the pool and what is interesting is the purpose of the pool setback as to not impact the neighbor. Here there are variances that are needed, instead of having a neighbor you have a sidewalk and street. Every area that is adjacent to the lot, front yard and side and because it is a pizza pie triangular lot, every yard is a front yard and a side yard. There is nothing offensive about putting a pool close to the house in a triangular section when the setback issues are going to a street, you are not going to disturb the neighbors. I would like to call my first witness, William Jensen, licensed engineer in the state of New Jersey. Can you describe the property.

William Jensen, the property is in a R-2 zone, it is located at the corner of Lakeview Road and Monmouth Drive and the majority of the property is fronted by Lakeview and Monmouth. The existing dwelling has a detached garage. When we connect the house to the garage, there are setback issues come into play at side and rear, so now the dwelling the side yards are 1.7 and 2.8. It is an existing condition but we are attaching the two structures together.

Robert Farber, most of the bulk issues that pertain to the garage are the unique scenario the accessory structure becomes part of the main structure which gives us additional non-conformities.

William Jensen, yes. For clarification so the existing garage from the side yard is 4.7 feet from the side yard and the dwelling is 9.1 and the addition will be 6.6. Splitting the difference.

Robert Farber, the addition itself does not approach anything that the garage does, in other words most of the issues pertain the garage. What is the proposed width of the pool?

William Jensen, there is an existing patio where the applicant is proposing a 12x24 in - ground pool and 775 square feet of patio around the pool. The pool will only be 14 feet from the dwelling itself and only 4 feet from the existing patio and 21 feet at the smallest distance to Monmouth Drive.

Robert Farber, none of this will be near any adjoining homeowner?

William Jensen, correct. The proposed improvements to the pool will be along Monmouth Drive and across the street is a church and across the street on Lakeview is a resident. Monmouth Drive setback to the Church would be 91 feet to the Church and to the residential property to the South would be about 118 feet. Building coverage is 16% which is below the 20% allowed and impervious lot coverage is 36.6 where 40% is allowed.

Robert Farber, for the record, applicant is proposing a four foot fence around the pool. Present the pool rendering with the fence around the pool area.

Sam Cohen, is that the proposed fence around the pool? Can we put shrubbery around the pool to conceal the fence. Arborvitae's would be better.

Robert Farber, my client will not object to that.

Sam Cohen, can we put the pool equipment closer to the house.

David Simhon, where you are putting the pool is very visible to the side yard and very visible to both streets.

Sam Cohen, the Arborvitae's would cover.

Irwin Levine, the pool should be completely covered.

David Simhon, you show it 14 feet from the structure, it could be closer to the structure about 5 feet and maybe a little smaller.

Richard Cummings, pool is in the front yard which is a problem.

General discussion among board and attorney regarding location of pool and visibility to public.

Robert Farber, I call Thomas Giegerich, licensed architect State of New Jersey. You designed the plans for the addition to the structure. Please describe the addition.

Thomas Giegerich, the garage will remain a garage, no living space. The garage doesn't go into the house and has it's own entrance.

Robert Farber, we can make a condition that the garage will never be used a living space.

Thomas Giegerich, we got rid a half bath in the kitchen so there would be more kitchen space and we will put a bath in front of the existing den for the use by the pool.

Richard Cummings, that new addition is a bedroom?

Thomas Giegerich, that little LP is a guest room. We are redoing the roof as the existing is a shed roof.

Kathleen Jannarone, attaching the garage to the house is a great idea and most of it is not in view, the pool however by having it in the front yard is setting a bad precedent.

Robert Farber, I do not see it as a precedent at all because of the triangular shape of the yard. The only people being affected are those driving by. This a is a scenario that where the yard is surrounded by streets.

Richard Cummings, any comments from the public? None.

Robert Farber, since there are no comments, in conclusion, I want to assure the Board that if a resolution is proposed that pool would be 9 feet closer to the house in the same orientation with full arborvitae coverage around everything, pool equipment moved.

Kathleen Jannarone, can you be more specific where the pool equipment would be.

David Simhon, they are coming up with a plan and a landscape plan.

Richard Cummings, any other comments?

David Simhon. I make a proposal to make accept the plan with the conditions discussed.

Richard Cummings, do we have a second? No second? Do we need some other changes?

Robert Farber, if the board has a problem seconding this, I ask the board consider a resolution regarding the addition by the garage.

Kathleen Jannarone, I think we should bi-furcate the garage addition from the pool and carry the pool portion to next month.

Robert Farber, I would make a motion to bi-furcate the garage addition from the pool and carry the pool portion to next month to get the garage done before the summer.

Sam Cohen, I'll make a motion to accept the garage. Richard Cummings seconds the motion.

Moved by: Sam Cohen

Seconded by: Richard Cummings

#### ROLL CALL VOTE

Those in favor: Sam Cohen, Richard Cummings, Kathleen Jannarone, Irwin Levine, David Simhon, Max Zeevi

Those opposed: None

Those absent: Ruby Antebi, Joe Cohen, Mandy Cohen, Nicole Cohen, Richard Fetaya

Those not voting: None

There being no further business, the meeting was adjourned.

Respectfully submitted;

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Michael W. Egan

Planning Board Secretary