

BOROUGH OF DEAL

PLANNING BOARD/BOARD OF ADJUSTMENT MINUTES

July 7, 2021

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

Kathleen Jannarone 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: Joe Cohen, Sam Cohen, Kathleen Jannarone, Irwin Levine, Max Zeevi

Those Absent: Ruby Antebi, Mandy Cohen, Nicole Cohen, Richard Cummings, Richard Fetaya, David Simhon

A motion was made by Kathleen Jannarone and seconded by Max Zeevi that the minutes of the June 2, 2021 meeting be adopted.

Moved by: Kathleen Jannarone

Seconded by: Max Zeevi

ROLL CALL VOTE

Those in favor: Kathleen Jannarone, Max Zeevi

Those opposed: None

Those absent: Antebi, Mandy Cohen, Nicole Cohen, Cummings, Fetaya, Simhon,

Those not voting: Joe Cohen, Sam Cohen, Irwin Levine

Note: After adoption of minutes vote, Board Member David Simhon joins the meeting.

The first item on the agenda is 11 Lakeview Road, Block 63, Lot 3. Mitchell & Estelle Betesh. Applicant is presenting a revised plan for a proposed swimming pool and patio. Attorney for the applicant, Robert Farber.

Enter into evidence:

A-9 Pool Variance Plan by Jensen Design Group dated May 27, 2021

A-10 Four Renderings

A-11 Three Photos of Subject Property

B-2 Engineer review letter by Leon S. Avakian, Inc. Dated February 17, 2021 with a revision date of June 25, 2021.

B-3 Planning Board Affidavit by Joseph Cohen dated July 1, 2021.

Robert Farber, a housekeeping matter. This is a continuation of the March 3rd 2021, meeting. Is there a sufficient quorum of people?

Michael Egan, Board Secretary. Yes.

Robert Farber, Our professional is Mr. Jenson who is still under Oath. At the March 3rd meeting, the application was bifurcated for the garage. This is a pool that is technically in the front/Side yard and the property is shaped like a pizza box. It is triangular. It is not a square lot.

In terms of everything we seek to do tonight, I want the Board to be mindful that we're under Maximum Building coverage we are plenty under and are going from 12.4% to 16.0%. In terms of impervious coverage, we are only going up 36.6% which is below the 40%. I can represent to you that if you compare the plans the pool has been significantly altered. The pool has been moved to within 6 feet of the fireplace on the side of the house. So from the vantage point of Lakeview Drive it is now conforming, it is not conforming because technically it is a front yard on Monmouth Drive. Now the pool was initially contiguous with the structure on Lakeview drive and has been moved back. The decking has been pushed back and was contiguous with the covered porch and now it is contiguous with the structure, which puts it back significantly. Significant foliage has been designed to camouflage this it is very close to the house. This is not a conspicuous pool by any means whatsoever. The pool equipment has been moved so it is now off of the driveway and is extremely camouflaged. While it is near the neighbor's house it is in a corner way away from any area where people normally populate. So the contiguous lot on the non-conforming side is not a lot, it is a street. It constitutes a front yard because it is a triangular shaped lot. I spent a few hours driving around Deal and there are some properties that I would like to point out before we take testimony from Mr. Jensen. Because no one is being a cowboy here. I will mention three, 48 Pleasant Place where the pool is in the corner adjoining the two properties, of Roosevelt Ave and Pleasant Place, 120 Roosevelt Avenue by Pleasant Place, 111 Monmouth Drive is another home where the pool is completely on the corner.

Kathleen Jannarone, Mr. Farber, I know that you know that every application stands by itself.

Robert Farber, I wish to establish that there is precedence here. I will add that there is 2 recent ones, 1 at 6 Roseld Court which is being put in a technically in a front yard but is a rear yard and tennis court at 51 Jerome which abuts Lawrence Avenue but the front of the house is Jerome Avenue. I just want to place that on the record. I will point out that when the initial application was heard on March 3rd the suggestion was made, can we make the pool closer to the house, which we have done, can you push back from the front, which we have done, can you push the decking back from the front, which we have done, can you hide the pool more, which we have done. I just want to express to the Board that we were responsive to some of the concerns you had. I call Mr. Jensen.

William Jensen, the pool is now 35 feet from Lakeview Road. The patio was moved back to be 50 feet. Those dimensions, the pool was moved 6.2 feet and the patio was moved 10.3 feet further back.

Robert Farber, when we moved the pool closer to the house, the original plan had it 14 feet from the house and now it is 6 foot further from Lakeview.

William Jensen, we are proposing a solid four foot vinyl fence and Evergreen landscaping to screen.

Robert Farber, because it is a front yard and the fence should only be 3 feet but we are seeking a variance for four feet because there is a pool involved. Mr. Farber shares some photos with the Board, exhibit A-11. He also presents exhibit A-10.

Kathleen Jannarone, what is important here is that this pool is an area where swimming activity will be visible, and noise heard by the neighbors. Even with the proposed shrubs and fence, it will not reduce the noise and activity of the pool and equipment. This pool is accessible from two streets. Even with the fence and hedge, this pool could attract unwanted guests with possible tragic results. I cannot support this application.

Robert Farber, there is precedence for putting a pool on a corner from two sides that has been approved. This is not a traffic nuisance, it is abutting streets so I do not see where the noise would effect any neighbors. The only neighbors have been noticed and none of them have objected. Again three applications, 111 Monmouth Drive, 120 Roosevelt Ave and 48 Pleasant Place have pools.

Kathleen Jannarone, the application stands by itself. There should be no comparison. Do any Board members have any comments.

Sam Cohen, I can't support this application. To have a patio 10 feet from the street and a pool 35 feet from the street. I don't think it would be proper for our town to have a pool in that placement. Not every lot can have a pool.

Kathleen Jannarone, this property cannot accommodate this pool. Any questions from the public to question of the expert. None. Any question from the public? None.

Robert Farber, I have appeared before this Board many times and I am respectful. There has been no testimony of any particular danger presented by the pool. Your Engineer, noted the peculiar shape of the property that creates a hardship. I am making a record and for the purpose of the record and I understand that every application stands on it's own. The concern of the Board is that the lot somehow creates access on two sides and that the pool will be a nuisance and that is the going to be loud and noisy. The neighbors have not complained. The pool is concealed and there has been no testimony that it would create a nuisance.

Erik Anderson we need a motion to approve or a motion to deny.

Sam Cohen makes a motion to deny the application, Joe Cohen seconds the motion.

Moved by: Sam Cohen

Seconded by: Joe Cohen

ROLL CALL VOTE

Those in favor: Joe Cohen, Sam Cohen, Kathleen Jannarone, David Simhon, Max Zeevi

Those opposed: Irwin Levine

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

Those not voting: None

The next item on the agenda is 2 Runyan Ave, Block 34, Lot 1.02. Joseph Harary. Applicant is proposing the construction of a new rooftop deck on the pool house. Attorney for the applicant, Jessica Sweet.

Enter into evidence:

A-1 Planning Board Application dated March 19, 2021

A-2 Architectural Plan by David Feldman dated March 12, 2021

A-3 Boundary Survey by Eric V. Wilde of Colliers Engineering dated February 22, 2021

A-4 Planner Exhibit by Nicholas A. Graviano of Graviano & Gillis Architects 7/7/2021

B-1 Engineer review letter by Leon S. Avakian, Inc. dated June 24, 2021

Jessica Sweet, we have an application to utilize a portion of an existing pool cabana for a rooftop deck. Our planner is Nicholas Graviano. There are relatively minor modifications needed to the Cabana roof to accommodate it to a rooftop deck. We are requesting a variance from the Ordinance 30-86.5D which prohibits rooftop decks in a residential zone. We are also requesting a variance to the existing rear yard setback of the Cabana. There is no modification to that, it is simply an existing condition that we want a legal request. I call Mr. Nicholas Graviano, Planner and Partner with Graviano & Gillis, Architects and Planners. Hold a BS from Rutgers, Master in City and Regional Planning from Rutgers and a Law Degree from Temple University and Licensed Planner in New Jersey.

Kay Jannarone, the Board accepts.

Jessica Sweet, if you would describe the site and the existing structures and layout.

Nicholas Graviano, shares the architectural plans submitted with the application. Page 1 of submission. This lot contains a single family detached dwelling, driveway, pool and cabana and is in the R-1 zone. It is 2 ½ times the size required by the district, 47,000 square feet where 18,000 is required. The applicant is requesting a variance approval for a rooftop deck on the accessory pool cabana. The deck is roughly 326 square feet in size and in prospective two parking lot spaces in a parking lot are equivalent to this. This is a very small portion of the rooftop. This property has some unique characteristics, it is a corner lot and is a single family of one story and one story dwellings cannot accommodate balcony's or decks. When you are in an

Ocean environment it is advantageous to have a balcony or deck that overlooks the Ocean. As you go through Deal, you find balconies off the second floor is a common condition. Presents the Planner exhibit A-4 from an aerial view. The applicant will be able to handle rails. The applicant is not modifying the footprint of the accessory structure with this application solely putting steps to the roof, a rooftop deck and the glass railing materials. The applicant needs a C variance from Ordinance 30-86.5D in that no roof top deck is permitted in a residential district. This can be granted under the C2 criteria. This deck is 326 square feet, the landscaping shields the accessory structure from view from the roadway and it's below the height requirements of the district. In this case there is no substantial detriment to the public good and there is no substantial impairment to the zone plan or zoning ordinance, it certainly does not compromise the intent of the district it's similar to a balcony use which is permitted by code.

David Simhon, the steps leading to the top of the Cabana are in the rear of the Cabana?

Nicholas Graviano, they are on the side of the Cabana that faces Ocean Avenue but they are screened by the landscaping.

Joe Cohen, when the structure is in place and the rails are extended up, is the view of the top of the pool house totally blocked by the shrubbery on both sides?

Nicholas Graviano, there is extensive landscaping on Ocean Avenue and on the neighbor's side which would be in excess of the height of the structure, a large amount will be covered.

Joe Cohen, if standing on top of the pool house, I don't think you would want someone looking over your property line and it's a little intrusive.

Nicholas Graviano, there is a very dense shrubbery that would block the view of the neighbor.

Joe Cohen, any equipment, electric, water or speakers on top?

Nicholas Graviano, no, just the railings and the roof top.

Irwin Levine, what is to prevent the owner to enclose the roof?

Joe Cohen, you have to get a variance for that.

Kathleen Jannarone, I always thought that prohibiting roof top decks was for safety, is it possible to have someone jump from the roof to the pool?

Nicholas Graviano, this application will be governed by all applicable building code regulations, so it will certainly be scrutinized by the Borough's building department.

Kathleen Jannarone, any members in the public that wish to be heard? None.

Jessica Sweet, I have no further witness's.

Erik Anderson, any members of the public wish to make a comment? None.

David Simhon makes a motion to approve the application. Sam Cohen seconds the motion.

Moved by: David Simhon

Seconded by: Sam Cohen

ROLL CALL VOTE

Those in favor: Joe Cohen, Sam Cohen, Irwin Levine, David Simhon, Max Zeevi

Those opposed: None

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

Those Abstaining: Kathleen Jannarone

Max Zeevi requests to step down from the board.

The final item on the agenda is the proposal for a minor subdivision to create two separate lots from an existing parcel. The Board is being asked to review a proposal of a subdivision for a piece of property that is owned by the Borough. Under the law, technically the Mayor and the Commissioner can participate in this discussion but for an abundance of caution, they will not and will recuse themselves from the discussion. Peter Avakian, Town Engineer will be presenting.

Peter Avakian, the Borough does own a parcel of land about a quarter of an acre along the Ocean on Roosevelt Avenue. The parcel of land is immediately south of the Pump Station. It has a straight line depth from Roosevelt Avenue of 150 feet along the westerly property line, a little bit longer along the beach front and if you notice on the drawing you see stone along the easterly edge of the lot. That is a project the Borough undertook after Sandy and the Borough secured almost \$475,000 in funding from NJ Office of Emergency Management, Flood Hazard Mitigation, Sandy Restoration. We constructed a wall fully along the Pump Station to protect our infrastructure. We stabilized the Pump Station. The provision was that we maintain 15 foot wide parcel of the property of the North Side so along Roosevelt Avenue directly to the wall and the Beachfront. The purpose of that was for Municipal Public Beach access. Not necessarily a stairway down to the Beach but having the public to walk out to the Wall so there would be an opportunity to view. On the North Side there is a stairway, was built by the NJ Department of Environmental Protection, division of Fish and Wildlife. They maintain it. The purpose of tonight is to tell the Planning Board that the Borough of Deal is moving forward with the sale of this property. We're here because it is creating two lots and we want affirmation or approval from the Board, not in the form of a Resolution or Planning Board approval, just a vocal approval in the form of a letter that can be sent to the Commissioners saying we have heard this testimony, we agree that it is a positive thing to sell this property and reap the financial benefit and to maintain access to the Beachfront. You are in an advisory capacity. It is consistent with the Master Plan and the Wall will remain with the Borough for Public access.

Joe Cohen, the lot that is being created by this subdivision, is that lot already a residential property?

Peter Avakian, historically it has been a residential property owned by the Borough.

Joe Cohen, so Lot 16 is buying this property?

Sam Cohen, yes but with the condition that they can not build on it.

Erik Anderson, at this point you would instruct me to write a letter to the Board of Commissioners. The Board is only advisory.

Kathleen Jannarone, I would like a letter to the Commissioners.

Joe Cohen, we reviewed the proposal and agree with the Commissioners decision to transact this property.

Erik Anderson, this is consistent the Borough's Master Plan and we agree with the Commissioners decision to engage in this subdivision.

Irwin Levine, we should have our names assigned to this.

Erik Anderson, this is an advisory consent. The letter would be sent under my signature at the direction of the majority of the Board. The Commissioners were looking to receive a response from the Board either way. The letter essentially would say that the Board at the July 7th meeting heard testimony from the Board Engineer and is consistent of the Master Plan and have no objection of the proposed subdivision of the property.

Irwin Levine, I do not want to be a party to that decision.

Erik Anderson, hypothetically, if the Board members do this affirmatively, I can add that Irwin denied this decision.

Kathleen Jannarone, I have no problem with this decision.

Joe Cohen, I agree with it.

Erik Anderson, I am instructed to put the letter together by the majority of the Board.

There being no further business, the meeting was adjourned.

Michael Egan/Board Secretary

