

BOROUGH OF DEAL

PLANNING BOARD/BOARD OF ADJUSTMENT MINUTES

February 7, 2023

A special virtual meeting of the Planning Board/Board of Adjustment of the Borough of Deal was called to order by Planning Board Attorney Erik Anderson.

FOLLOWING THE SALUTE TO THE FLAG, Stephen Carasia, Board Secretary, read the following 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: Mr. Antebi, Vice Chair J. Cohen, Mrs. Jannarone, Commissioner Simhon, Mr. Kassin

Those Absent: Chair Cummings, Mrs. M Cohen, Mrs. N Cohen, Mayor Cohen, Mr. Zeevi, Mrs. Mamiye

MINUTES -

A motion was made by Commissioner Simhon and seconded by Vice Chair J. Cohen that the minutes of the January 4, 2023 meeting hereby be approved as presented.

ROLL CALL VOTE

Ayes: Mr. Antebi, Vice Chair J. Cohen, Mrs. Jannarone, Commissioner Simhon

Nays: None

Absent: Chair Cummings, Mrs. M Cohen, Mrs. N Cohen, Mayor Cohen, Mr. Zeevi, Mrs. Mamiye

Those Not Voting: Mr. Kassin

CORRESPONDENCE - None

RESOLUTIONS- None

OLD BUSINESS-

Continuation of the January 4, 2023 meeting of 15 Poplar Avenue, Block 13 Lot 11.01:

Erik Anderson, Planning Board Attorney, explained that Michael Convery, Esq., is the attorney for the applicant, and then he provided a recap explaining this is an appeal of the Zoning Officer's determination that the application submitted by the homeowner does not require Planning Board review or approval, and the applicant is challenging the Zoning Board's determination stating the Zoning Officer was wrong and the application does require Planning Board review and approval.

Michael Convery, attorney to applicant, Richard Dweck, responded he agreed it is also an inclusion of the interpretation of the zoning ordinance as it relates to those challengeable items.

Erik Anderson, Planning Board Attorney, clarified for the record that there is no one in the audience that is seeking to introduce expert testimony and as such the evidence portion is now closed, and now they can open the floor to public comment.

Vice Chair J. Cohen stated a letter was received from the east property's trust.

Erik Anderson, Planning Board Attorney, concurred a letter was received from the Chamlin Family Trust, submitting their summation in writing with the approval of Mr. Convery and Mr. Ward.

Michael Convery, applicant's attorney, responded that is correct, but if the board members plan on voting this evening, then that letter should be read before the vote.

Erik Anderson, Planning Board Attorney, responded the board members already read it and that should suffice.

Vice Chair J. Cohen stated the summary of the letter was the concern with the safety issue and it was leaving it to the board's determination on the issue that Mr. Convery brought up along with the town. He continued stating in the letter they were concerned that the board took into account the safety issue and that the town's Engineer and Administrator would look at those issues and address those properly.

Erik Anderson, Planning Board Attorney, stated there is no greater or lesser weight that should be given to that letter because it was written as a summation.

Michael Convery, applicant's attorney, asked if we can mark the letter.

Erik Anderson, Planning Board Attorney, said we can mark the letter as C-1.

Vice Chair J. Cohen opened the floor for public comment. There were no comments.

Steven W. Ward, Esq., attorney of Mitch and Nathalie Vilinsky, gave summation and clarification on the issues in question which included if the application conforms with the zoning ordinance, the lot frontage adequacy, the front yard setback of the sports court and dwelling, definition of balcony as it relates to the ordinance, the effect on the easement, improvement imposed in the floodway, and the issue of parking extending into the front yard. He stated the overwhelming weight of the evidence in this case shows the applicant did apply with a conforming application, the zoning ordinances were interpreted correctly by the borough, the applicant has all along sought to develop a new home on this property, the applicant has not sought variance relief once to comply with the ordinance, and we do believe that they have complied with the ordinance. Thus, the applicant would ask that the board affirm the grant of the zoning permit and the interpretation of the ordinances by the borough, and dismiss the appeal filed by the objector.

Michael Convery, applicant's attorney, gave summation and stated the job of the board, in his opinion, is to look at the plain meaning of what the ordinance says and follow it, and that their determination on today's hearing will set a precedent on how they determine lot lines and frontage. He continued stating his client claims variances and other forms of relief are required on this application, and while Mr. Ward's client believes that is not the belief, we defer, and believe the board should review this from the variance that we feel is necessary. He stated their testimony provided evidence contrary to Mr. Ward's explanation of the issues in question.

Vice Chair J. Cohen opened the session for board members comments and questions.

Commissioner Simhon stated we have listened to our professional engineer, who stated variance relief was not necessary and defers to the expert's opinion.

Vice Chair J. Cohen commented what we are voting on is whether the board should have heard this as a variance process of planning versus depending on our professionals that work for the board of the town that have decided to issue work permits without having to come to the Planning Board for variances.

Erik Anderson, Planning Board Attorney, further explained the issue is whether the determination of the Zoning Officer was correct. As well, he explained the appeal is stating the Zoning Officer was wrong and the application should have been referred to the Planning Board.

Mr. Antebi made a motion to deny the appeal, seconded by Mrs. Jannarone, a moved unanimously by all members present.

Moved by: Mr. Antebi

Seconded by: Mrs. Jannarone

ROLL CALL VOTE

Those in favor: Mr. Antebi, Vice Chair J. Cohen, Mrs. Jannarone, Commissioner Simhon, Mr. Kassin

Those Absent: Chair Cummings, Mrs. M Cohen, Mrs. N Cohen, Mayor Cohen, Mr. Zeevi, Mrs. Mamiye

Vice Chair J. Cohen commented they are depending and relying on the expert witness, Mr. Avakian, and the expert witnesses that were brought forward on behalf of the borough to deny the appeal.

Erik Anderson, Planning Board Attorney, confirmed the Zoning Officer determined the applicant can proceed without Zoning Board approval.

There being no further business, a motion to adjourn was made at 8:22 P.M. by Vice Chair J. Cohen, seconded by Commissioner Simhon, and moved unanimously by all members present.

Stephen Carasia
Board Secretary