

BOROUGH OF DEAL

PLANNING BOARD/BOARD OF ADJUSTMENT MINUTES

January 6, 2021

A regular 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, Joe Cohen, Nicole Cohen, Sam Cohen, Richard Cummings, Kathleen Jannarone, Irwin Levine, David Simhon.

Those Absent: Mandy Cohen, Richard Fetaya, Max Zeevi.

A motion was made by David Simhon and seconded by Kathleen Jannarone that the minutes of the December 2, 2020 meeting be adopted.

Moved by: David Simhon

Seconded by: Kathleen Jannarone

ROLL CALL VOTE

Those in favor: Antebi, Joe Cohen, Nicole Cohen, Sam Cohen, Jannarone, Levine, Simhon
Those opposed: None
Those absent: Mandy Cohen, Fetaya, Zeevi
Those not voting: Cummings

The first item on the agenda is the Annual Re-Organization of the Board.

Kathleen Jannarone made a motion to appoint Richard Cummings as Chairman to the Planning Board/Board of Adjustment, seconded by Ruby Antebi.

ROLL CALL VOTE

Those in favor: Antebi, Joe Cohen, Nicole Cohen, Sam Cohen, Jannarone, Levine, Simhon
Those opposed: None
Those absent: Mandy Cohen, Fetaya, Zeevi
Those not voting: Richard Cummings

Nicole Cohen made a motion to appoint Kathleen Jannarone Vice-Chair to the Planning Board/Board of Adjustment, seconded by Ruby Antebi.

ROLL CALL VOTE

Those in favor: Antebi, Joe Cohen, Sam Cohen, Nicole Cohen, Cummings, Levine, Simhon
Those opposed: None
Those absent: Mandy Cohen, Fetaya, Zeevi
Those not voting: Kathleen Jannarone

Ruby Antebi made a motion to appoint Erik Anderson Board Attorney to the Planning Board/Board of Adjustment, seconded by Kathleen Jannarone.

ROLL CALL VOTE

Those in favor: Antebi, Joe Cohen, Nicole Cohen, Sam Cohen, Cummings, Jannarone, Levine, Simhon,
Those opposed: None
Those absent: Mandy Cohen, Fetaya, Zeevi
Those not voting: None

David Simhon made a motion to appoint Michael Egan, Board Secretary to the Planning Board/Board of Adjustment, seconded by Richard Cummings.

ROLL CALL VOTE

Those in favor: Antebi, Joe Cohen, Nicole Cohen, Sam Cohen, Cummings, Jannarone, Levine, Simhon,
Those opposed: None
Those absent: Mandy Cohen, Fetaya, Zeevi
Those not voting: None

Richard Cummings made a motion to Adopt Resolution 21-01 for the Board’s meeting nights as the First Wednesday of each month at 7:30pm, seconded by Kathleen Jannarone.

RESOLUTION 21-01

WHEREAS, in accordance with the Open Public Meetings Act, Chapter 231 P.L. 1975, it is necessary for the Planning/Zoning Board of Adjustment of the Borough of Deal, as a public body to post and maintain a schedule of the regular meetings of the public body to be held during the years; and,

WHEREAS, the Planning/Zoning Board of Adjustment of the Borough of Deal will maintain the following regular meeting dates from February 2021 to January 2022 as follows:

- February 3, 2021**
- March 3, 2021**
- April 7, 2021**
- May 5, 2021**
- June 2, 2021**
- July 7, 2021**
- August 4, 2021**
- September 1, 2021**
- October 6, 2021**
- November 3, 2021**
- December 1, 2021**
- January 5, 2022**

NOW, THEREFORE, BE IT RESOLVED by the Planning/Zoning Board of Adjustment of the Borough of Deal, County of Monmouth, State of New Jersey that it does hereby adopt the meeting schedule of the Planning/Zoning Board of Adjustment as noted above.

BE IT FURTHER RESOLVED that with the utmost concern for the health and safety of the public and our municipal staff due to the potential spread of the COVID-19 virus, it is necessary that the Borough of Deal take proactive measures. The health and safety of our community remains our number one priority

BE IT FURTHER RESOLVED that the Board of Commissioners of the Borough of Deal will hold these meetings allowing the public to remotely access the public meeting due to the Municipal Building being closed to the public. Utilize the following call-in information:

<https://zoom.us/j/96945438931>

Meeting ID: 969 4543 8931

Passcode: 775069

Phone:

Call # 1-646-558-8656

Meeting ID/PIN: 969 4543 8931#

Passcode: 775069

The Preliminary Agenda will be available on the Borough's website, www.dealborough.com, 72 hours prior to the start of the meeting. The public may participate during public comment when the Chairman or his designee opens the meeting to the public. The public may also provide comments via electronic mail or in writing 24 hours prior to the meeting to be read during the public comment portion of the meeting. These comments can be sent to deputyclerk@dealborough.com, mailed or hand delivered to Borough Hall, 190 Norwood Avenue, Deal, NJ 07723 24 hours prior to the meeting.

ROLL CALL:

Moved by: Richard Cummings

Seconded by: Kathleen Jannarone

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

Those opposed: None

Those absent: Mandy Cohen, Richard Fetaya, Max Zeevi

Those Abstaining: None

The second item on the agenda is the adoption of the Resolution for 94 Roosevelt Avenue, Block 12, Lot 1.01. Lee & Lisa Cohen approved at the December 2, 2020 meeting.

RESOLUTION

Whereas, Lee and Lisa Cohen, the record owners of the property have applied to the Planning Board of the Borough of Deal for a variance at the premises located at 94 Roosevelt Avenue, Borough of Deal and known as Block 12, Lot 1.01 on the official tax map of the Borough of Deal which premises is located in both the R-1 zone

The Applicant is proposing a porte-cochere on the west side of the dwelling with a new concrete driveway.

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. The Applicant presented the following exhibits:

A-1 As-Built Survey by Charles Surmonte, PE dated 8/5/19.

A-2 Site Plan by James P. Gilday of Moss Gilday Group dated 12/20/18 with a revised date of 7/13/20.

A-3 architectural Plan by Alan J. Zimble of Zimble Architecture dated 9/4/20.

A-4 Color Rendering of street view of Porte-Cochere.

A-5 Two Google aerial photos of subject property and neighbors.

B-1 Engineer review letter by Leon S. Avakian, Inc. dated 10/27/20.

4. The property has a total area of 46,218.50 square feet.
5. The existing lot contains a single family dwelling, with a swimming pool and tennis court.
6. The Applicant is proposing a porte-cochere on the west side of the dwelling, with a new concrete driveway.
7. The permitted minimum side yard setback is 30 feet. Existing on the east side is 30.8 feet and 30.1 feet on the west side. Applicant proposes no change to the east side. Applicant proposes 10.17 feet on the west side to the porte-cochere. **A variance is required.**
8. The permitted maximum building coverage permitted is 20%. Currently existing is 10.89%. Applicant proposes 12.06% which is conforming.
9. The permitted maximum impervious coverage permitted is 40%. Currently existing is 34.30%. Applicant proposes 39.99% which is conforming.
10. The Applicant has agreed that the porte-cochere will never be enclosed.

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 2nd day of December 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 October 27, 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). All landscaping plans, if any, shall be subject to review and approval by the Borough's Engineer.

Moved by: Sam Cohen

Seconded by: David Simhon

ROLL CALL VOTE

Those in favor: Joe Cohen, Mandy Cohen, Nicole Cohen, Sam Cohen, Kathleen Jannarone, Irwin Levine, David Simhon

Those opposed: None

Those absent: Richard Cummings, Richard Fetaya

Those not voting: Ruby Antebi, Max Zeevi

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Deal on the 6th day of January 2021 that the Resolution be adopted.

Moved by: David Simhon

Seconded by: Kathleen Jannarone

ROLL CALL VOTE

Those in favor: Joe Cohen, Nicole Cohen, Sam Cohen, Kathleen Jannarone, Irwin Levine, David Simhon.

Those opposed: None

Those absent: Mandy Cohen, Richard Fetaya, Max Zeevi

Those not voting: Ruby Antebi, Richard Cummings

The next item on the agenda is 45 Hathaway Avenue, Block68, Lot 15, Eli Sasson. Applicant is proposing an in-ground pool with patio. This was carried from the December 2, 2020 meeting for revisions to the plan. Attorney for the applicant, Jessica Sweet.

Enter into evidence:

A-5 Plot Plan by David H. Boesch, Nelson Engineering, revised December 18, 2020.

B-2 Engineer review letter by Leon S. Avakian, Inc. with a revised date of 1/4/2021.

Jessica Sweet, we revised the plans and removed all the variances except for the rear yard pool setback variance of 23 feet where 30 feet is required. I have David Boesch here who prepared the plans and would like to swear in.

Erik Anderson, do you swear and affirm that the testimony you will give is true.

David Boesch, I do.

Jessica Sweet, would you talk a little bit about the revisions that were done.

David Boesch, A-1 of A-5. We relocated the pool centrally in the yard so it satisfies both side yard setbacks and reduced the width of the pool to 16.10 wide which gives us a rear yard setback of 23 feet to the water. The pool is now in the Northeast corner and the size of the patio has been reduced to satisfy the 35% rear coverage requirement. We also proposed a grading plan where we are showing we will be collecting all patio runoff near Hathaway Avenue. The height of the fence will be compliant at 5 feet.

Sam Cohen, with the substantial changes, it looks good.

Kathleen Jannarone, I think that this application was diligently revised to comply with our Ordinance requirements and I thank them for that.

David Boesch we will provide an evergreen hedge.

Kathleen Jannarone makes a motion to approve the application, Joe Cohen seconds the motion.

Moved by: Kathleen Jannarone

Seconded by: Joe Cohen

ROLL CALL VOTE

Those in favor: Ruby Antebi, Joe Cohen, Nicole Cohen, Sam Cohen, Kathleen Jannarone, Irwin Levine, David Simhon.

Those opposed: None

Those absent: Mandy Cohen, Richard Fetaya, Max Zeevi

Those not voting: Richard Cummings

Note: Richard Cummings and David Simhon step down from the Board as they are within 200 feet of the applicant for the next application.

The next item on the agenda is 6 Roseld Court, Block 35, Lot 17, Edmund Nahum. Applicant is proposing an in-ground pool with a patio. This was carried from the November 4, 2020 meeting for revisions to the plan. Attorney for the applicant, Jennifer Krimko.

Enter into evidence:

A-4 Pool Variance Plan/Proposed Demolition Plan by Martin Miller, Professional Engineer dated December 19, 2019 with a revision date of December 14, 2020.

A-5 Photo packet consisting of 4 photos

B-2 Engineer review letter by Leon S. Avakian, Inc. dated August 24, 2020 with a latest revision date of January 4, 2021

Jennifer Krimko, at the last meeting the applicant was represented by David Esses. Let's review A-5 photo packet. As you can see, it's a narrow lot with a narrow house. When we talk about the character of the neighborhood, the backyard back's up to an alley way, it's overgrown, trees across public works and the public park. At the last meeting they were asking for significant variances. The revised plan shows the pool going in east-west direction and it's only 14 feet wide and we squeezed into the center of the property so we are maximizing the setbacks on either side. This one has 23 feet on the North side and 23 feet on the South side. In addition to the 23 feet, we are proposing a solid five foot fence and a row of evergreens along the neighbor so whatever activity would be going on in the backyard is significantly buffered over what is there today and more importantly when looking at the pavement behind so anyone passing by having the solid fence and enclosing the yard there would be no visible impact to the rear. We have a hardship in that we have a lot that is only 60 feet wide where 100 feet is required. Well is it a hardship to have a pool, the answer is it is and the hardship is not can I have or not have a pool. The hardship is am I limited to the extent in which I can use my property because of this unique situation. It is because I have this undersized width for this lot, it is impossible for me to meet it and have a pool in the yard. What is the negative impact, visual impact and noise. I would argue that we are putting up a solid fence and a row of evergreens will mitigate the noise far better than a conforming pool at 30 feet with no buffering and this is a better zoning alternative. Coverage is fully conforming. The variance we are seeking is only for setback which is a function of the narrow and long lot.

Kathleen Jannarone, I have to say that the applicant made major changes to conform with our Deal Ordinances and kudos to them.

Sam Cohen, I think they made a tremendous effort to make this conforming.

Public Comment, Saul Tawil, 8 Roseld Court. Concerned with the bushes side and concerned with the drainage problem.

Jennifer Krimko, we would happy to put the bushes on the right side also. The Board Engineer would approve a drainage plan. I would like to amend the application to have a row on the right side.

Linda Massry, 4 Roseld Court. I live next door and long before the current house was built. Every time that backhoe went into the ground, our house shook. They have a sump pump going into the storm drain and that is one of the places that floods all the time. With the pool, noise is going to be more than normal. Evergreens and just a fence without a noise barrier will not do it. It is a small lot and you hear everything.

Jennifer Krimko, you object to a pool whether it is 30 feet or 23 feet?

Linda Massry, yes. Without a sound barrier, the bushes are not enough. They shouldn't have setback requirements if they aren't going to held to them.

Odette Cummings, 10 Roseld Court. I love our neighbors, the noise doesn't bother me. My only concern is the water. We didn't have water in our basement until they built the tennis court and I am really concerned about the drainage and what effect it will have.

Jennifer Krimko, every application that comes through is subject to a thorough drainage review by the Board engineer and every application is subject to compliance with his report.

David Massry, 4 Roseld Court, it is everybody's right to request a variance, that I understand. It is also a fact that the law states 30 foot setback. If you put in the 60 foot lot and a 30 foot setback on either side you would have 0 foot pool. That I wouldn't object to that. If they had a 100 foot lot then I wouldn't be here.

Sam Cohen makes a motion to approve the application, Kathleen Jannarone seconds the motion.

Moved by: Sam Cohen

Seconded by: Kathleen Jannarone

ROLL CALL VOTE

Those in favor: Ruby Antebi, Nicole Cohen, Sam Cohen, Kathleen Jannarone, Irwin Levine,

Those opposed: None

Those absent: Mandy Cohen, Richard Fetaya, Max Zeevi

Those not voting: Joe Cohen, Richard Cummings, David Simhon

Note: Richard Cummings and David Simhon re-join the Board. Joe Cohen steps down as he is a neighbor of the next application.

The final application is 9 Monmouth Terrace, Block 71, Lot 2, 9 Monmouth Terrace, LLC. Applicant is proposing the construction of a 3-story single family dwelling with a swimming pool and driveway. Attorney for the applicant, Jennifer Krimko.

Jennifer Krimko, I would like to make a procedural request. This particular property there has been a lot of chatter in the community. There has been a lot of concern expressed which is why we have delayed the hearing as long as we did. There were two neighbors who hired attorneys that were objecting, one sent a letter and one reached out to me. There have been more conversation and zoom calls then I would like to admit. The plans have been dramatically revised since the initial submission. You've never seen the initial submission so you don't even know how much they have been revised. They have revised to the extent that it is my understanding that the two objecting neighbors, represented here by Douglas Widman and Donald Pepe, are satisfied with the plans subject to certain stipulations which I will put on the record. Because this is a complex application with a very unique lot and unique hardship, please hold your questions until I complete my presentation.

Erik Anderson, I see Mr. Whitman on the zoom call. Are there any other counsel for the record?

Donald Pepe, I am from Scarinci & Hollenbeck, representing the Habert's at 8 Monmouth Terrace directly across the street from the applicant. I have a letter of representation on file also.

Douglas Widman, law firm of Davison, Eastman, Munoz and Paone of Freehold and I represent the Mr. & Mrs. Fallack at 10 Hathaway Avenue.

Erik Anderson, any other attorneys? None.

Enter into evidence:

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.

Jennifer Krimko, I call Keith Smith, professional Engineer with French & Parrello.

Erik Anderson swears in the witness.

Jennifer Krimko, Keith, I have indicated that this lot is unique in that we had greater restrictions on how we could use the property. Is that correct?

Keith Smith, yes.

Jennifer Krimko, we'll look at the rear yard setback. Typically, in today's rules what would be the required setback be from the storm protection wall behind these lots?

Keith Smith, it's a 25 foot setback for construction.

Jennifer Krimko, and that's from the New Jersey Department of Environmental Protection. A general discussion on the setbacks of the other homes in the neighborhood. This property is not allowed to use the 25 feet, because we are up against Hathaway and not the next nearest lot, if we were, we would be able to use the 25 foot setback. We are limited to go no further eastward than the existing house is today, not just the house.

Keith Smith, no structure, no house, no pool.

Jennifer Krimko, our lot area by virtue of the CAFRA restriction is reduced by 22%. It drives the development forward because there is no usable rear yard area. We initially encroached further North towards Hathaway Avenue but due to concerns of the neighbors we moved it further South by 12 feet. We are now only 8 feet further towards Hathaway than the existing house. Does the Borough Ordinance regulate planting that you could put in your front or side number that are tight?

Keith Smith, no.

Jennifer Krimko, you are not obligated to give your neighbors a view. What we agreed to do is to record an easement in favor of the neighbor Mr. Habert that assures him that nothing will be built, planted or constructed above the line. What that does is that even though we are getting a variance, in exchange for getting variances to build the house, we are permanently restricting this property to guarantee Mr. Habert and the public a view of the ocean in perpetuity. If the application is approved, we would record a deed subject to Mr. Pepe's review that would protect the site across our property over the entirety of this red area. On the South side we would protect similarly and record in the County.

Jennifer Krimko and Keith Smith discuss the variances for the application.

Jennifer Krimko, Keith, is there anything in the Engineer review letter that we cannot comply with?

Keith Smith, No.

Richard Cummings, any questions from the public for the Engineer? None.

Jennifer Krimko, I call the architect Jose Ramirez. Licensed architect.

Erik Anderson swears in the witness.

Jennifer Krimko, the house has different setbacks on each floor.

Jose Ramirez, yes.

Jennifer Krimko, for an Ocean front house, is this a big house? Are we looking to put a big mansion here?

Jose Ramirez, there is a constraint on the lot and the house is only one room wide on the first floor and I do not know if the Board knows that I built the Sitt house, the Eli Cohen house and also 21 Monmouth Terrace so I am very familiar with the area. This house is smaller and is only 6,250 square feet and a house like 11 Hathaway is 12,540 and 21 Monmouth Terrace, the Sitt house is 7853, both houses not including the basement.

Jennifer Krimko, we do not have a basement and that is an additional hardship we have is because of the CAFRA regulations, we are not permitted to have a basement. Any living space we want has to be above ground. Because we can't meet the 50 foot setback, we can't meet the height at the 50 foot setback. Our maximum height of 42 feet, it is actually setback more than 70 feet from Hathaway.

David Simhon, are they allowed to put a fence on the edge of the property?

Jennifer Krimko, there will be a fence and it will be out of site view based on the re-grading.

General discussion ensues about setbacks, house design, number of variances.

Jennifer Krimko states that if the application is approved, we would not to be able to add any porches into the setback. I would formally amend the application to increase the setback on Monmouth Terrace by two feet.

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

David Simhon makes a motion to approve the application subject to the conditions stated, Sam Cohen seconds the motion.

Moved by: David Simhon

Seconded by: Sam Cohen

ROLL CALL VOTE

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

Those opposed: Kathleen Jannarone

Those absent: Mandy Cohen, Richard Fetaya, Max Zeevi

Those not voting: Joe Cohen

There being no further business, the meeting was adjourned.

Respectfully submitted.

Michael W. Egan
Planning Board Secretary