

BOROUGH OF DEAL

PLANNING BOARD/BOARD OF ADJUSTMENT MINUTES

May 13, 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: Ruby Antebi, Mandy Cohen, Nicole Cohen, Sam Cohen, Richard Cummings, Kathleen Jannarone, David Simhon, Max Zeevi

Those Absent: Richard Fetaya, Irwin Levine.

A motion was made by David Simhon and seconded by Kathleen Jannarone that the minutes of the March 4, 2020 meeting be adopted.

Moved by: David Simhon

Seconded by: Kathleen Jannarone

Roll Call Vote:

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

Those opposed: None

Those absent: Richard Fetaya, Irwin Levine

Those Not Voting: Ruby Antebi, Mandy Cohen, Irwin Levine, Max Zeevi

The first item on the agenda is 25 Marine Place, Block 56, Lot 5, Monmouth Realty Development. Applicant is proposing an in-ground swimming pool with a patio and a new driveway. Attorney for the applicant, Jennifer Krimko.

Enter into evidence:

A-1 Topographic Survey by Anthony F. Dirosa, P.L.S. 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 revisin date of May 7, 2020.

Jennifer Krimko, we have a lot that is non-conforming, the structure is not conforming. We plan to construct an in-ground pool and an associated-improvements. Originally when the application came to you it needed variance relief for above grade and fence height. We revised the plans and eliminated that and the only variance we are seeking is with regard to the placement of the pool equipment. The Ordinance requires it in the rear yard and it is in the side yard but next to the other equipment and is actually behind the covered porch.

Sam Cohen, I went to the site today and have no issue.

David Simhon, besides the filter equipment are they putting in a heater?

Jennifer, yes a filter and a heater and if you look it is 12 feet from the property line.

Sam Cohen, between the two houses is shrubbery.

Richard Cummings, any questions from the audience, none.

Sam Cohen makes a motion to accept the application. Richard Cummings seconds the motion.

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

The second item on the agenda is 2 Candy Lane, Block 2, Lot 2, Joseph and Sharon Hanin. Applicant is proposing a swimming pool with patio. Applicant is removing a portion of the driveway in the rear of the property to allow for the swimming pool. Attorney for the applicant, Jennifer Krimko.

Enter into evidence:

A-1 Survey of the property by Jeffrey S. Grunn, P.L.S. of Lakeland Surveying dated November 7, 2019 with a latest revision dated January 10, 2020.

A-2 Photo of the street view of the house.

A-3 Pool Variance Plan by William E. Jensen, Jr. P.E. of Jensen Design Group dated January 21, 2020 with a latest revision date of January 30, 2020.

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

Jennifer Krimko, this one like the last one is the construction of a pool and associated improvements, the plot is non-conforming and the structure is non-conforming so there are no variances at all as part of the application for the pool or the pool equipment and the only variance we're seeking as it relates to the lot size and existing improvements. We can agree to the Engineer letter by Mr. Avakian dated April 14, 2020.

Kathleen Jannarone, this is an in-ground pool, correct?

Jennifer Krimko, yes.

David Simhon, it is a non-conforming lot and everything conforms with the pool?

Jennifer Krimko, yes.

Richard Cummings, any questions from the audience? None.

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

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

The next item on the agenda is the 46 Runyan Ave, Block 34, Lot 3, Ralph and Vivian Sitt settlement agreement. Board Attorney, Erik Anderson.

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”), entered into this ____ day of ____, 2020 between Ralph Sitt and Vivione Sitt (collectively “Sitt”) residing at Block 34, Lot 3 on the Tax Map of the Borough of Deal, commonly known as 46 Runyan Avenue (the “Property”) and the Borough of Deal Planning Board (“Board”), collectively Sitt and the Board are the “Parties”.

WHEREAS, Sitt is the owner of the Property.

WHEREAS, The Board is a duly constituted board under the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.

WHEREAS, the Property has a total lot area of 32,540 square feet and measures 100 feet in width by 325.40 feet in depth and contains a two-story framed dwelling with an in-ground pool, pool cabana, patio, and paved basketball court.

WHEREAS, the Property is located in the R-2 residential zone where single-family homes are a permitted principal use and a pool, pool house and basketball court are permitted accessory uses in the R-2 zone.

WHEREAS, the Property has pre-existing non-conformities in terms of lot width and frontage.

WHEREAS, on or about March 2, 2017, Sitt appeared before the Board on an application for a second floor addition to the dwelling which did not change the footprint of the dwelling.

WHEREAS, in April of 2017, the Board granted Sitt approval for the second floor addition which included a dormer at 8.75 feet in width, however the dormer was built 14.75 feet in width.

WHEREAS, in 2018, Sitt sought a variance to maintain the dormer as constructed at 14.75 feet in width, which was denied by the Board in July of 2018.

WHEREAS, on or about January 16, 2019, Sitt filed an application for variance relief for the expansion of the existing second floor dormer to 18 feet wide, angling back to a width of 21.25 feet.

WHEREAS, the approved dormer, as constructed dormer and proposed dormer all fully conform to the bulk requirements including height, set-backs and coverages; however, variance relief pursuant to N.J.S.A. 40:55D-70.C was required as per Section 30.48 of the Borough of Deal’s Development Regulation for construction on a non-conforming lot with an existing structure that is not fully conforming.

WHEREAS, on April 4, 2019, the Borough held a public hearing at which time it was presented exhibits including an as-built survey and architectural plans of the Property and dormer. The Board found that the application before it was substantially different from the application submitted in July of 2018 for the as-constructed dormer to remain at 14.75 feet. The Board found that Sitt failed to demonstrate the existence of an exceptional situation and that Sitt did not meet their burden of proof with respect to the positive criteria and that the benefits derived from the deviation of the land development ordinance would not substantially outweigh the detriment.

WHEREAS, on April 4, 2019, the Board voted to deny Sitt's application for variance relief to expand the existing dormer and adopted a formal resolution denying Sitt's application on May 2, 2019 which was published in the Asbury Park Press on May 14, 2019 (the "Resolution").

WHEREAS, on June 18, 2019, Sitt filed an action in lieu of prerogative writs challenging the Resolution as being arbitrary, capricious and unreasonable and not based upon substantial, credible evidence which is currently pending in the Superior Court of New Jersey under Docket No. MON-L-2160-19 (the "Action").

WHEREAS, the Sitts and the Board have reached an amicable resolution of the issues by and between them regarding all claims which were raised or could be raised in the Action.

NOW THEREFORE for good and valuable consideration the sufficiency and receipt of which is acknowledged and accepted by the Parties, the Parties agree as follows:

1. The above recital paragraphs are made a part of this Agreement as if set forth at length herein.
2. A hearing before the Board will be held pursuant to *Whispering Woods v. Middletown Planning Board*, 220 N.J. Super. 161 (1987) at which the Board will consider the adoption of this Settlement.
3. The existing dormer which is 14.75 feet in width shall be approved by the Board and allowed to remain.
4. Upon approval of the existing dormer remaining as per paragraph 3 hereof, Sitt shall reimburse the Board for legal fees incurred in defending the Action, not to exceed \$2,500.
5. The Parties agree that entering into this Agreement is not and shall not be construed as an admission of liability by either Party.
6. This Agreement represents the entire agreement and understanding between the Parties, constitutes the complete, final and exclusive embodiment of their agreement with respect to the subject matters hereof, and supersedes and replaces any and all prior agreements and understandings, both written and oral, concerning the subject matter hereof. The terms of this Agreement are contractual and not mere recitals. This Agreement may not be changed or modified, except by a writing signed by the parties hereto.
7. This Agreement will be governed by and construed under the laws of the State of New Jersey.
8. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.
9. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.
10. Each party represents that it has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement and signs this Agreement of its own free will. No party to this Agreement and has relied upon any representations or statements made by any other party hereto which are not

specifically set forth in this Agreement. The parties each understand how this Agreement will affect their legal rights and voluntarily enter into this Agreement with such knowledge and understanding.

11. The Parties recognize that the Board is a public body and must take action pursuant to public notice to enter into this Agreement and that such Agreement is contingent upon such public action at a duly noticed public meeting. Upon approval by the Board, the Action shall be dismissed, with prejudice, as to all parties and without costs to any party.

12. This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing all claims that potentially could have been asserted. The Parties acknowledge that:

- (a) They have read this Agreement;
- (b) They have been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice or that they have voluntarily declined to seek such counsel;
- (c) They understand the terms and consequences of this Agreement;
- (d) They are fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Mutual Agreement on the respective dates set forth below.

WITNESS: Ralph Sitt

Vivione Sitt

The Planning Board of The Borough of Deal

_____ By: _____

Erik Anderson, what we discussed is that the Dormer will stay, the applicant will be reimbursing Deal for legal fees up to \$2,500 dollars in connection with this matter. So the steps would be, 1) to pass a resolution to adopt the settlement agreement, then what we would do is the next meeting we would have to have a hearing, basically the application again.

Kay Jannarone, could you restate that please.

Erik Anderson, the first step the Board takes is approving the settlement to resolve the lawsuit. The applicant will come back and essentially to present the plans the Board has already seen, it will give the public an opportunity to ask any questions about the application and then the Board will vote presumably in accordance with the settlement agreement, approve the Dormer. So right now the Resolution would be a motion to approve the settlement and then a vote.

Richard Cummings, any questions from the public on this settlement. None.

Sam Cohen makes a motion to approve the settlement. Richard Cummings seconds the motion.

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

Jennifer Krimko, just so the Board knows, that I will have to notice for the settlement at the next Board meeting on June 3rd, 2020.

The last item on the agenda at the last Commissioner meeting, the Mayor and Commissioners introduced an Ordinance. Commissioner Simhon had brought up about our R-3 zone and for some reason, the impervious coverage is at 30% where all our other zones were at 40%. It seemed the residence in the R-3 zone were at a disadvantage compared to the other zones. So the Commissioners introduced Ordinance 1218 Chapter XXX- Development Regulation. Also street view pictures, so now we will get a google earth street view and a topographic from above in the sky.

Erik Anderson, the Board is more of an advisory capacity and the Commissioners adopt the Ordinance.

Stephen Carasia, R-3 is basically from Borough Hall to Poplar Brook west to the tracks.

Richard Cummings, I have no issue with this.

Jennifer Krimko, the planning board has to take an action even if it is by unanimous vote.

Erik Anderson, we would just write a letter, there is no formal roll call.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Michael W. Egan

Planning Board Secretary