

BOROUGH OF DEAL

PLANNING BOARD/BOARD OF ADJUSTMENT MINUTES

December 7, 2022

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, Joe Cohen, Richard Cummings, Kathleen Jannarone, David Simhon

Those Absent: Mandy Cohen, Nicole Cohen, Sam Cohen, Jack Kassin, Irene Mamiye, Max Zeevi

A motion was made by Richard Cummings and seconded by David Simhon that the minutes of the November 22, 2022 meeting be adopted.

Moved by: Richard Cummings

Seconded by: David Simhon

ROLL CALL VOTE

Those in favor: Ruby Antebi, Richard Cummings, Kathleen Jannarone, David Simhon

Those opposed: None

Those absent: Mandy Cohen, Nicole Cohen, Sam Cohen, Irene Mamiye, Max Zeevi

Those not voting: Joe Cohen

The first item on the agenda is the adoption of the Resolution for 108 Jerome Avenue, Block 8, Lot 3, 108 Jerome, LLC. Approved at the November 22, 2022 meeting.

RESOLUTION

Whereas, 108 Jerome, LLC, the record owner of the property has applied to the Planning Board of the Borough of Deal for minor subdivision approval and variance approval at the premises located at 108 Jerome Avenue, Borough of Deal and known as Block 8, Lot 3 on the official tax map of the Borough of Deal which premises are located in the R-1 zone.

The Applicant is proposing a minor subdivision, creating two (2) lots. The proposed lot 3.02 will be a corner lot measuring 130 feet along Pleasant Place and 189 feet along Jerome Avenue. The proposed Lot 3.03 will be an interior lot measuring 150 feet in width and 187 feet in depth.

The Applicant is proposing a three-story single-family dwelling with a swimming pool, cabana and other site amenities on proposed Lot 3.02. The Applicant is proposing a three-story single-family dwelling with a swimming pool, cabana, shed and existing tennis court to be resurfaced on Lot 3.03.

The proposed improvements require Planning Board approval for the minor subdivision and variance for rear yard setback to the tennis court.

A hearing was held in connection with this matter on November 22, 2022.

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 was represented by Jennifer Krimko. Esq.
3. The Applicant presented the testimony of Patrick Ward, a New Jersey licensed engineer and professional planner.
4. The Applicant presented the following exhibits:

A-1 Minor Subdivision Plan consisting of 9 sheets prepared by Patrick Ward, P.E. and Justin Hedges, P.L.S. of Insite Engineering, LLC dated September 26, 2022.

A-2 Architectural Plan for Proposed Lot 3.02 consisting of 9 sheets prepared by Michael Savarese, R.A. of Michael Savarese Associates, dated July 22, 2022 with the latest revision date of August 30, 2022.

A-3 Architectural Plan for Proposed Lot 3.03 consisting of 7 sheets prepared by Michael Savarese, R.A. of Michael Savarese Associates, dated March 11, 2022 with the latest revision date of September 6, 2022.

A-4 Boundary, topographic and utility survey by Justin J. Hedges, P.L.S. of Insite Surveying, LLC dated October 18, 2021.

A-5 Colorized Overhead Subdivision Exhibit

B-1 Engineer review letter by Leon S. Avakian, Inc. dated November 10, 2022.

5. The property has a total area of 55,398 square feet. The property is a corner lot and is located on the southeast corner of the intersection of Jerome Avenue and Pleasant Place.
6. The lot measures 184 feet in width and 289 feet in depth with an existing three-story dwelling and tennis court on the lot. Applicant is removing the existing dwelling and all site amenities except the tennis court, which is being modified.
7. The Applicant is proposing a minor subdivision, creating two (2) lots. The proposed Lot 3.02 is a corner lot which measures 130 feet along Pleasant Place and 189 feet along Jerome Avenue. The proposed Lot 3.03 is an interior lot which measures 150 feet in width and 187 feet in depth.
8. The Applicant is proposing a three-story single-family dwelling with a swimming pool, cabana and other site amenities on proposed Lot 3.02. The Applicant is proposing a three-story single-family dwelling with a swimming pool, cabana, shed and existing tennis court to be resurfaced for Lot 3.03.
9. The property is an oversized lot.
10. The existing property will be divided into two lots which will conform with Borough ordinance requirements for lot size in the R-1 zone.
11. All of the proposed construction of the houses and accessory structures will fully comply with Borough ordinances.
12. The minimum lot area permitted is 18,750 square feet. Existing is 55,398 square feet. Applicant is proposing 27,330 square feet for Lot 3.02 and 28,068 square feet for Lot 3.03. Both conform.
13. The minimum lot front permitted is 150 feet. Existing is 189.4 feet. Applicant is proposing 189.4 feet for Lot 3.02 and 150 feet for Lot 3.03. Both conform.
14. The minimum lot width permitted is 150 feet. Existing is 184.3 feet. Applicant proposes 184.3 feet for Lot 3.02 and 150 feet for Lot 3.03. Both conform.
15. The minimum lot depth permitted is 125 feet. Existing is 289.8 feet. Applicant is proposing 187.12 feet for Lot 3.02 and 187.12 feet for Lot 3.03. Both conform.

16. The minimum front yard setback (along Pleasant Place) permitted is 50 feet. Applicant proposes 50.33 feet for Lot 3.02 and 50 feet for Lot 3.03. Both conform.
17. The minimum front yard setback (along Jerome Avenue) permitted is 50 feet. Applicant proposes 50.46 feet for Lot 3.02. Both conform.
18. The minimum side yard setback permitted is 27.96 feet for Lot 3.02 and 30 feet for Lot 3.03. Applicant proposes 34 feet for Lot 3.02 and 30 feet for Lot 3.03. Both conform.
19. The minimum rear yard setback permitted is 37.42 feet for Lot 3.02 and 37.42 feet for Lot 3.03. Applicant proposes 59.79 feet for Lot 3.02 and 70.12 feet for Lot 3.03. Both conform.
20. The maximum building height permitted at 50 feet from the right-of-way is 28 feet. Applicant proposes 28 feet for Lot 3.02 and 28 feet for Lot 3.03. Both conform.
21. The maximum building height permitted at 64 feet from the right-of-way is 42 feet. Applicant proposes 36.82 feet for Lot 3.02 and 41.83 feet for Lot 3.03. Both conform.
22. The maximum building coverage permitted is 20%. Applicant proposes 17.8% for Lot 3.02 and 12.7% for Lot 3.03. Both conform.
23. The maximum impervious coverage permitted is 40%. Applicant proposes 40% for Lot 3.02 and 39.9% for Lot 3.03. Both conform.
24. The minimum side yard setback permitted for a swimming pool is 30 feet. Applicant proposes 40.94 feet for Lot 3.02 and 31 feet for Lot 3.02. Both conform. Both conform.
25. The minimum rear yard setback permitted for a swimming pool is 30 feet. Applicant proposes 30 feet for Lot 3.02 and 77 feet for Lot 3.03. Both conform.
26. The proposed cabana for Lot 3.03 is attached to the principal dwelling and complies with applicable setbacks.
27. The minimum side yard setback permitted to a cabana is 10 feet. Applicant proposes 11.94 feet for Lot 3.02. This conforms.
28. The minimum rear yard setback permitted to a cabana is 10 feet. Applicant proposes 22 feet for Lot 3.02. This conforms.
29. The maximum building height (accessory use) permitted is 18 feet. Applicant proposes 11.75 feet for Lot 3.02 cabana. This conforms.
30. The minimum side yard setback permitted to tennis court is 10 feet. Currently existing is 7.7 feet, which is non-conforming. Applicant proposes 13.42 feet, which conforms.
31. The Applicant is proposing a rear yard setback of 8.25 feet to the resized and resurfaced tennis court. The existing setback to that property line is 6.5 feet. This setback is measured from the east property line. **A variance is required.**
32. The Applicant is making the existing tennis court smaller, which in turn has resulted in it becoming more conforming. The tennis court setback on the eastside is being increased, which improves its current condition.
33. The Applicant has agreed to install landscaping to buffer the pool equipment.
34. The Applicant agrees that during construction of the two dwellings, vehicles associated with the construction will park on their side of Pleasant Place.
35. The Applicant will be removing trees in the center of the property accommodating the construction of the new dwellings.

Whereas, the Board has determined that the variance relief requested by the Applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan of the Borough of Deal; and

Whereas, the Board has reviewed the proposed Minor Subdivision proposal and have approved same.

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Deal on the 22nd day of November 2022 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 November 10, 2022.
- (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 from the municipality, county, stated and/or federal agencies 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). Applicant shall submit the subdivision deed for review and approval by the Planning Board attorney and the metes and bounds description for review and approval by the Planning Board engineer.

Moved by: David Simhon

Seconded by: Richard Cummings

ROLL CALL VOTE

Those in favor: Ruby Antebi, Mandy Cohen, Sam Cohen, Richard Cummings, Kathleen Jannarone, Jack Kassin, David Simhon

Those opposed: None

Those absent: Joe Cohen, Nicole Cohen, Irene Mamiye, Max Zeevi

Those not voting: None.

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Deal on the 7th day of December, 2022 that the Resolution of be adopted.

Moved by: Richard Cummings

Seconded by: David Simhon

ROLL CALL VOTE

Those in favor: Ruby Antebi, Richard Cummings, Kathleen Jannarone, David Simhon

Those opposed: None

Those absent: Mandy Cohen, Nicole Cohen, Sam Cohen, Jack Kassin, Irene Mamiye, Max Zeevi.

Those not voting: Joe Cohen

The next item on the agenda is Richard Dweck of 21 Poplar Ave is appealing a September 6, 2022 decision of the Zoning Officer and seeking an interpretation of the Borough Development Regulations affecting premises known as Tax Map, Lot 11.01, Block 13 and as 15 Poplar Avenue in the Borough of Deal. Attorney for the applicant is Michael Convery, Esq. Prior to this presentation, Board Attorney Erik Anderson goes over some procedural items.

Erik Anderson, for the record, John Buzzuaro, Attorney, who are you representing?

John Buzzuaro, on behalf of the owners of the property at 5 Poplar which is to the direct East of the Vilinsky property which is the subject of this appeal and it should be noted for the record also that the Chamlin's own an easement that encumbers the Vilinsky property which is depicted on the various submissions to the Board including the surveys. I am here on behalf of the Isadora and Kenneth Chamlin Trust representing them, I am not here necessarily here as an objector, I am here more as an observer, to the extent, I know Mr. Convery has filed an appeal of the zoning officer determination and the construction board determination to the extent that Mr. Convery is successful in his application tonight I just want to be advised as to what the variances will untimely be that the Vilinsky's will have to satisfy, so that is number one and number two, just for purposes for clarity and for purposes of the record, the Board may recall when the Vilinsky's made their initial application to the Planning Zoning Board, the Chamlin Trust filed an objection to that and that application was untimely withdrawn, then Plans were submitted to the Building Department for which the applicant felt they did not need any variances, there was an appeal filed by Mr. Convery and the Dwecks and I joined in on that appeal and then my client has been rather silent since that time, I was apprised of this application by my client a couple of weeks ago, while I don't join in on Mr. Convery's present appeal I am just an observer, I would like the opportunity to ask questions potentially of his witness and potentially anyone else who testifies tonight.

Erik Anderson, as a threshold matter, reads an e-mail that was sent to Mike Convery and Stephens office. Regarding the appeal, I am of the opinion that under the MLUL, the Mayor, who is not with us right now, and the Class III, Commissioner Simhon can sit on the appeal as the statute only discusses when they have to be taken off the Board is for a Use variance. So, anyone has an objection to Commissioner Simhon sitting on the Board, Stephen the Mayor is not here tonight?

Stephen Carasia, correct, he (the Mayor) could not make it.

Erik Anderson, if anyone has an objection to that, now is your opportunity to speak your piece. John, everyone else agreed to that, so it's kinda on you.

John Buzzuaro. I have no objection on that.

Erik Anderson, this is going to be the procedure as follows: I will give an overview to the nature of the dispute, the Boards role regarding the appeal, Mr. Convery will have an opportunity to present his case, his initial opening, discuss and present his witnesses to explain why he believes the zoning officer's decision was incorrect. Mr. Ward and Mr. Buzzuaro will have an opportunity to question any of Mr. Convery's witnesses, if Mr. Ward wants to present case to support our zoning officer's determination, he will have an opportunity to do that, obviously any of the attorneys and the public will have an opportunity to question witness. Similar to an objector's case, Mr. Ward and Mr. Buzzuaro will have an opportunity to make any brief closing remarks to the Board followed by Mr. Convery to wrap up his case, then the Board will deliberate. Is there anybody on the call that has a question with regards to the procedure or an objection to the procedure? None. Board Members, this is where we are at, we have had a couple of previous applications which have been submitted by the owner at 15 Poplar, those applications have been withdrawn and the most recent application has been submitted and our zoning officer has a obligation to review that application and the plans and he ultimately decided that the plans conformed with our Zoning Ordinances and Borough Ordinances and there was no need for Planning Board review. In turn what has happened is Mr. Convery's client is objecting to the zoning officer's determination and arguing that the application in fact needs to be submitted to the Planning Board for approval. Mr. Convery, did I get that right?

Michael Convery, yes Mr. Anderson, you did.

Erik Anderson, Mr. Convery is presenting to the Board an appeal on behalf of his client, arguing that our zoning officer potentially got it wrong. It is his client's burden to establish that our zoning officer made a mistake, did not interpret our Ordinances correctly, did

not apply them appropriately to this plan that was submitted. With that being said, does anyone on the Board have a question on about what is happening tonight? Ultimately when everything is presented to you, the Board will have to make a decision, the decision will be either our Zoning officer got it right and you will deny the appeal or Mr. Convery's position is correct and our zoning officer got it wrong and the appeal is successful. I will now turn this over to Mr. Convery.

Michael Convery, Attorney in Shrewsbury, New Jersey. I represent the appellant, Richard Dweck, the owner of 21 Poplar Avenue in the Borough. He is the adjacent property to the West of the applicant's property. Incident to all to Borough requirements, requisite notice was published of this meeting in the Asbury Park Press on November 25th, all residents within 200 foot area of the applicant's property were also noticed, all the proofs were submitted to Mr. Egan yesterday, I heard nothing from the Borough that the proofs were not sufficient. I would ask at this time Mr. Chairman, Mr. Anderson if the applicant has jurisdiction to proceed?

Erik Anderson, Mike, the notice requirements check out?

Michael Egan, Board Secretary, all the notices requirements were perfect.

Erik Anderson, the Board has jurisdiction to proceed.

Michael Convery, as was introduced by Mr. Anderson, this is an appeal pursuant to 40:55D-70A appeal to Deal zoning officer's decision of September 6, 2022. His decision was to issue a zoning permit without the need for any variances, waivers, exceptions or other relief and we believe that decision as Mr. Anderson has stated is incorrect. Also, an appeal pursuant to 40:55D-70B seeking an interpretation of the Deal development regulations and other Deal Ordinances. We seek a determination from the Board of again that the relief that was not requested or variances that were required was an incorrect position and we want a determination from the Board incident to those development ordinances and other ordinances. So, Mr. Anderson correctly laid it out for you guys. I just want to briefly just surmise what our intentions are this evening. Our first witness will be Mr. Stephen Carasia, the Borough Zoning Officer and will have him testify on his review procedure and how he arrived to his ultimate decision to issue his September 6th letter to determining that the zoning permit should issue. Our second witness, the appellate will call his own expert, Peter Steck, Professional Planner and Community Planning Consultant.

Michael Convery calls Stephen Carasia as his first witness.

Prior to proceeding, Erik asks the Board Chair to allow Michael Convery to ask questions of the witness. Board Chair Richard Cummings says okay.

Michael Convery enters into evidence the following documents:

AP-1 Plot Plan by Matrix NewWorld Engineering by David Eareckson, P.E. with a date of 9/23/2021.

AP-2 Architectural Plan by Bohn Architecture and Design dated 11/30/2021.

AP-3 Letter by Leon S. Avakian, Engineer dated 9/1/2022 specifically from Denis Higgins.

AP-4 Zoning Plan Determination Letter by Stephen Carasia dated 9/6/2022.

Michael Convery proceeds to ask questions of witness Stephen Carasia.

Erik Anderson asks if Attorney Steven Ward, on behalf of 15 Poplar, Nathalie Vilinsky, has any questions of Mr. Carasia. He says none. Asks if John Buzzauro has any questions and he does and proceeds to question the witness.

Erik Anderson, any questions from the public for Mr. Carasia? None. Any questions from the board. Joe Cohen had one question.

Michael Convery calls his next witness, Peter Steck.

Peter Steck, by way of Education, a B.S. in Civil Engineering from Marquette University, a Masters in City and Regional Planner from Rutgers and have been a planner since 1976. Have testified at over 200 Planning Board meetings. Board Chair accepts as expert in Planning.

Peter Steck presents a 15 page slide presentation.

AP-5 Slide presentation by Peter Steck dated December 3, 2022.

AP-6 8 Roosevelt Avenue reproduced Plot Plan approved 5/2/2013.

AP-7 Copy Engineer review letter by Leon S. Avakian, Inc. for 8 Roosevelt Ave dated April 15, 2013.

AP-8 Copy Cover Sheet for 60 Ocean Ave, dated March 7, 2019.

AP-9 Copy Engineer review letter by Leon S. Avakian, Inc. for 60 Ocean Avenue with a revision date of 3/1/2019.

AP-10 Copy Plot Plan for 91 Ocean Ave dated 9/5/2018.

AP-11 Copy Engineer Letter by Leon S. Avakian for 91 Ocean Ave. dated 8/24/2018.

There was a discussion to have the exhibits sent to all parties for review. Due to the time, it was recommended that the appeal be carried to the next meeting on January 4, 2023 and was agreed upon by all parties.

Final item on the agenda was a request by Attorney Jennifer Krimko to have a 6 month extension approved for 8 Wallace, LLC. After discussion it was advised to conditionally approve the 6 month extension provided it applies with applicable law due to Pandemic and our Ordinance. Essentially, if we can give the 6 month extension we will give, if the law prevents it, then they don't get it.

ROLL CALL VOTE

Those in favor: Ruby Antebi, Joe Cohen, Richard Cummings, Kathleen Jannarone, David Simhon

Those opposed: None

Those absent: Mandy Cohen, Nicole Cohen, Sam Cohen, Jack Kassin, Irene Mamiye, Max Zeevi

Those not voting: None.

There being no further business, the meeting was adjourned.

Respectfully submitted.

Michael W. Egan

Planning Board Secretary