

**APPROVED MINUTES
REGULAR MEETING OF THE SEA BRIGHT UNIFIED PLANNING/ZONING BOARD
Tuesday, April 26, 2022**

Call to Order and Flag Salute

Chairman Cunningham called the meeting to order at 7:35 p.m. and requested those present join in the Pledge of Allegiance.

Open Public Meetings Statement

Good evening, Ladies and Gentlemen.

This Meeting Is Now Called to Order. The Borough of Sea Bright, in compliance with the Open Public Meetings Act, provided adequate notice of the time, date, and location of this meeting to the Asbury Park Press and Link News on January 13, 2022, filed notice with the Borough Clerk, and posted notice in the Borough Office and on the Borough website. This Meeting Is Open to The Public.

ADMINISTRATIVE MATTERS

Attendance Roll Call

Present: Bieber, Cashmore, Cunningham, DeSio, Gorman, Leckstein, DeGiulio

Not Present: Bills, Kelly, Lawrence, Schwartz

Also in attendance: Board Attorney Monica C. Kowalski, Esq., Engineer David J. Hoder, and Board Secretary Candace B. Mitchell

ITEMS OF BUSINESS

Approval of 4/12/22 Regular Meeting Minutes

Board member Marc A. Leckstein, Esq. offered a motion to approve the minutes, with a second offered by Councilman Erwin Bieber. The motion was carried upon the following roll call vote of eligible members:

Ayes: Bieber, Cashmore, Cunningham, Gorman, Leckstein

Nays: none

Memorialization of Resolution

APPLICANT: ALAN PORTO

ATTORNEY: BRADFORD BATCHA, ESQ.

APPLICATION NUMBER: 2022-10

BLOCK: 27

LOT: 1

ADDRESS: 568 OCEAN AVENUE

RESOLUTION NUMBER: 2022-10



**RESOLUTION OF THE UNIFIED PLANNING/ZONING BOARD
OF THE BOROUGH OF SEA BRIGHT
FOR BULK VARIANCE RELIEF
FOR FRONT YARD SETBACK AND BUILDING HEIGHT -- NEW CONSTRUCTION**

WHEREAS, BOARD MEMBER MARC LECKSTEIN, ESQ. offered the following Motion moved and seconded by **BOARD MEMBER STEVEN CASHMORE:**

WHEREAS ALAN PORTO hereinafter referred to as the “applicant”, by and through their attorney, **BRADFORD BATCHA, ESQ.**, filed an application with the Unified Planning/Zoning Board of the Borough of Sea Bright, (hereinafter referred to as the “Board”) seeking the following relief:

The applicant is seeking to construct a new single-family residence. The applicant will seek the following variances:

- (i) “c” variance: 130-39.C – Front yard setback of 12.6 feet proposed, where 25 feet is required
- (ii) “c” variance: 130-39.C – Building height of 41.7 feet proposed, where a maximum of 38 feet is permitted

In addition, the Applicant will request such other variances, exceptions, interpretations, and design waivers as may be determined to be necessary by the Planning/Zoning Board, and/or its professionals, in order to develop this property as stated above and will amend its application on the record accordingly.

WHEREAS, the application pertains to premises known and designated as Block 27, Lot 1 on the Tax Map of the Borough of Sea Bright, which premises are located at 568 Ocean Avenue, Sea Bright, NJ 07760 in the R-2 Zone; and

WHEREAS, all notice requirements were satisfied by the applicant and the Board has jurisdiction to hear, consider and determine the application at issue; and

WHEREAS the Board held a public hearing with regard to the referenced application on the following date, **APRIL 12, 2022**:

WHEREAS the following items were entered as Exhibits at the hearing which includes but is not limited to; any and all documentation as submitted and appearing on the Sea Bright website (seabrightnj.org) for presentation at the Public Meeting conducted in person, with public notice:

- **Zoning Denial, dated 2/18/22**
- **Application Packet, received 4/12/22**
- **Site Plan prepared by Charles J. Stewart, dated 1/21/22, revised 2/9/22, 2/28/22, and 3/4/22, 6 pages**
- **Floor Plans and Elevations prepared by Michael Melillo, dated 2/8/22, 4 pages**
- **Roof Height Survey prepared by Victor E. Vinegra, dated 3/29/22, 1 page**
- **Current photos, dated 3/9/22, 2 sheets with 5 photos total**
- **Jurisdictional Packet, received 4/11/22**

EXHIBITS PROVIDED AT MEETING:

- **EXHIBIT A-1: IS THE RENDERING PHOTO SUPERIMPOSED. DEPICTION OF HOME GOOGLE EARTH PHOTO WAS PART OF PACKAGE FOR REFERENCE.**
- **EXHIBIT A-2: RENDERINGS FROM ALL SIDES/PHOTO.**
- **EXHIBIT A-3: HANDWRITTEN CALCULATIONS ON FRONT YARD PREVAILING SURVEY WHICH WAS PROVIDED BY PACKAGE.**
- **EXHIBIT A-4: PHOTO WHICH SHOWS COMPARISON HOUSE AND NEIGHBORING PROPERTIES FOR HEIGHT.**

WHEREAS The Board listened to the Testimony of the following:

**MICHAEL MELILLO AIA
VICTOR VINEGRA, PP, PE AND LS**

WHEREAS The Board took Questions from the following member of the Public as to the witnesses presented:

NONE.

WHEREAS The Board took Public Commentary on the Application upon conclusion of the witness testimony as follows:

BRICE WEIDEMAN

WHEREAS, the Board, having given due consideration to the Exhibits moved into evidence and the Testimony presented at said hearing(s), does make the following findings of fact:

1. This is a 4800 sf home with a wrap around porch, arched and eye windows.
2. The roof lines comply with zoning but in the rear the stairwell and the cap on the stairwell do not comply. Remainder of house is 3.5 feet less than allowed under the ordinance and is less than 38'. Minimizing this particular area would lose the aesthetic created in the line of the home.
3. Each living floor is 9' (living levels) and the upstairs floor is 8' in height.
4. Bulk flex c proofs are presented and accepted by the Board where this specific piece of property is a double lot so deviation is appropriate in this instance as the majority complies, but the dormer is created to be aesthetically pleasing.
5. Testimony is provided that this design encourages municipal action to guide the appropriate use or development of all lands in a manner which will promote health, safety, morals, and general welfare; it will ensure safety from fire, flood, panic, and other natural manmade disasters. The design will promote the establishment of population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment and will promote a desirable visual environment through creative development techniques and good civic design and arrangements
6. This dormer causes no substantial detriment to public good. Benefits outweigh the detriments under building and impervious coverage. The applicant is not utilizing the full footprint of the house on the lot and is not subdividing the lot. This will be a family home.
7. The home is in keeping with the neighborhood and C2 height variances have been given in the past so it is not unheard of for this type of application and the deviation is minimal compared to the remainder of the roof line.
8. As for the Negative criteria, there is no substantial impact to the zone plan or ordinance and applicant is constructing a permitted single-family house in zone.
9. The Board agrees that both variances will be retained in the decision despite testimony that applicant provided that a set back variance may not be necessary in interpretation of ordinance. Board discussion prefers reliance on testimony for grant of variance rather than interpretation of ordinance.

WHEREAS, In order to prevail on an application for a variance, the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D – 70, requires the applicant to establish that the variance can be granted without substantial detriment to the public good and that the granting of the variance does not substantially impair the intent and purpose of the master plan, zone plan and zoning ordinance.

NOW THEREFORE, BE IT RESOLVED, by the Unified Planning/Zoning Board of the Borough of Sea Bright that it hereby adopts the aforesaid findings of fact and specifically makes the following conclusions:

- a. Based upon the aforesaid findings of fact, the Board concludes that:
 - i. The applicant has demonstrated that the proposed use of the property in question is substantially the same kind of use as that to which the premises were devoted at the time of the passage of the zoning ordinance.
- b. Based upon the aforesaid findings of fact, the Board further concludes that the granting of the approval set forth herein will not cause substantial detriment to the

public good and will not substantially impair the intent and purpose of the zoning ordinance and the zoning plan of the Borough of Sea Bright.

- c. **The Board specifically includes herein by reference, the Transcripts from the hearings, which provide the detailed basis and description of the decision as memorialized in this Resolution and do hereby rely upon same for further reference, as necessary.**

BE IT FURTHER RESOLVED, by the Unified Planning/Zoning Board of the Borough of Sea Bright that the following be and are hereby **GRANTED, as follows**:

Applicant is GRANTED bulk variance relief pursuant to NJSA 40:55D-70.c and applicant is granted variances to construct a new single-family residence per the plans submitted. The applicant is granted the following variances:

1. "c" variance: 130-39.C – Front yard setback of 12.6 feet proposed, where 25 feet is required
2. "c" variance: 130-39.C – Building height of 41.7 feet proposed, where a maximum of 38 feet is permitted.

Further, as a condition of approval, Applicant agrees to fully repair any damage to sidewalk post construction by replacing same, if required, to the Borough's specifications. Applicant must also comply with comments in the Board Engineer's letter for notes on the plans, if any, including any review and plot plan submitted for approval and any and all drainage calculations/reports provided for compliance. Applicant must also show mechanicals and must also show water and sewer lines/hookups on the plan to be provided, if required. Either Avakian (Town Engineer) or Hoder (Board Engineer) shall review plans and approve same, prior to construction permits being issued.

ALL APPROVALS GRANTED HEREIN ARE SUBJECT TO THE FOLLOWING CONDITIONS:

- (1) The applicant shall comply with any requirements established by, and obtain any necessary approvals of the following, IF APPLICABLE, to the proposed construction herein:
 - a. **SUBJECT TO ALL REPRESENTATIONS AND TESTIMONY OF THE APPLICANT BEING TRUTHFUL AND ACCURATE**

APPLICATION VOTE:

Adopted on a roll call on a motion by Board member Marc A. Leckstein and Seconded by Board member Stephen Cashmore

THOSE IN FAVOR: Bieber, Cashmore, Cunningham, Gorman, Lawrence, Leckstein

THOSE OPPOSED: None

RECUSED: None

ABSENT: Bills, DeGiulio, DeSio, Kelly, Schwartz

ABSTAINED: None

MEMORIALIZATION VOTE:

Adopted on a roll call on a motion offered by Board member Marc A. Leckstein and Seconded by Board member Councilman Erwin Bieber

THOSE IN FAVOR: Bieber, Cashmore, Cunningham, Gorman, Leckstein

THOSE OPPOSED: None

RECUSED: None

ABSENT: Bills, DeGiulio, DeSio, Kelly, Lawrence, Schwartz

ABSTAINED: None

I certify the foregoing to be a true copy of the Resolution memorialized by the Unified Planning/Zoning Board of Sea Bright at its meeting on April 26, 2022.

Date: April 26, 2022

Candace B. Mitchell
Administrative Officer
Unified Planning/Zoning Board
Borough of Sea Bright

Carried Application No. 2022-04

Ruth Fialko, 158 Ocean Ave., Bl. 34, L. 1

Bulk variance relief for lot width, front yard setback, and building height to demolish an existing single-story home and build a new 2½ story single-family home

The following exhibit had been made available for view on the Borough website:

- Revised Tech Review from Board Engineer regarding sidewalks, dated 4-14-22, 1 page

The Board Attorney stated that the Board maintains jurisdiction over the matter. Applicant Ruth Fialko was present and remained under oath. Board Attorney Monica Kowalski, Esq. explained that Ms. Fialko had told the attorney representing her not to attend. Ms. Fialko wished to take care of her testimony.

At the first hearing, 3/22/22, the Board had directed Board Engineer David Hoder to review the plans regarding the matter of a sidewalk requirement to be added to Ms. Fialko's plans. Mr. Hoder had submitted a brief letter and, subsequently, revised his letter to make it clear that he had indeed reviewed the plans for Ms. Fialko's application. The revised letter is below:

**HODER ASSOCIATES
CONSULTING ENGINEERS**

**1101 RICHMOND AVENUE, SUITE 201-4
POINT PLEASANT, NJ 08742**

April 6, 2022
Revised April 14, 2022

Ms. Candace Mitchell, Planning Board Secretary
Borough of Sea Bright
Unified Planning Board
1099 Ocean Avenue
Sea Bright, NJ 07760

Re: Fialko Residence - Revised
158 Ocean Avenue
Sidewalk Question
Block 34, Lot 1; R-2 Zone
Sea Bright App. # 2022-04
HACE # SEP-163

Dear Ms. Mitchell:

Our office is in receipt of the above application. While I did not do a complete technical review the project, I did look at the plans, and I did have a discussion with the applicant's attorney on whether the applicant should place sidewalks on Mountain View Way. I felt that sidewalks should be required since both the application at the end of the street (Mountain View Villas) and the two single family houses being built to the West of this application all have sidewalks proposed.

If you have any questions regarding the matter, please do not hesitate to contact our office.

Very truly yours,

HODER ASSOCIATES

David J. Hoder, P.E., P.P., C.M.E.
Unified Planning Board Engineer

Mr. Hoder answered the confusion expressed by Ms. Fialko and by some Board members regarding his first letter, and he clarified his opinion in his revised letter. He explained his views about having sidewalks on Mountain View Way. Since the newly developed properties on Mountain view Way are going to install sidewalks, Mr. Hoder recommends continuing the sidewalk along Ms. Fialko's property to meet with the sidewalk on Ocean Avenue.

Marc Leckstein agreed with Mr. Hoder.

Chairman Cunningham asked if there could be a curb cut. Mr. Hoder said there would be. There will be an apron.

Councilman Bieber asked about the telephone pole. Mr. Hoder said that there would be a slight radius around the telephone pole and, also, around the gas post.

Vice Chairman DeSio said there is adequate room, 8', to have a sidewalk. He said the sidewalk would make it safer for children walking to and from the beach. He believes this street is going to be an active street because there will be public access to the river and public access to the beach.

Heather Gorman asked what will happen to the gas line. Mr Hoder explained it will be 6 to 9 inches off the curb.

Mrs. Fialko stated that the public access is not new. She stated her opinion that there is a lack of safety because people have to cross Mountain View Way to get to the Ocean Avenue crosswalk. Heather Gorman stated that we can't assume what it was like before.

Ms. Fialko has stated that she is losing 10% of her property. Dave DeSio stated that Ms. Fialko is not losing her property. Part of her property will have a sidewalk on it. It is still her property.

Public comments:

A neighbor of Ms. Fialko, who lives at 6 Mountain View Way, is in favor of Ms. Fialko's position. He stated that his property has 25' in front as other properties on Mountain View Way have. He spoke in favor of Ms. Fialko's position against adding sidewalks to her property.

The public portion was closed.

Ms. Fialko added that having sidewalks will take away her guest parking. It will take away 10% of her property. It will disturb the expensive landscaping that survived superstorm Sandy. She also mentioned that people have always walked in the street. She asked whether all applicants are being asked to put in sidewalks.

Marc Leckstein answered that we can't compare what has been there for 20 or 30 years with what is planned, such as sidewalks. The Board has to consider what is good for the town. Mountain View Way is becoming one of the nicest streets in Sea Bright.

Stephen Cashmore said that he believes nothing the Board says will change Ms. Fialko's mind.

Ms. Fialko reiterated that she is losing her parking.

Councilman Bieber stated that the Board members appreciate the applicant's point of view, and he sees not having sidewalks a significant safety risk, especially when the street will be busier going forward.

Ms. Fialko said she will lose even more property around the utility pole, and that she will have to get rid of trees and landscaping.

Dave DeSio pointed out that a lot of what Ms. Fialko is trying to save will be lost due the disturbances on the property caused by the construction of the new house.

Heather Gorman, in favor of the sidewalk, said the new development on Mountain View Way will bring lots of new kids. Dave DeSio agreed there will be new families with children.

Chairman Cunningham stated it is clear the Board members, overall, want sidewalks. The Board is very happy with what Ms. Fialko has proposed, with a sidewalk added. He further stated that Ms. Fialko has options. She can walk away.

Board Engineer Hoder stated it is very common for planning boards to require sidewalks and that Sea Bright is a built-up town, not a rural area that doesn't need sidewalks.

Ms. Fialko pointed out that if she had done her project before the developer for Mountain View Villas at Sea Bright had come in, she wouldn't have had to put in a sidewalk.

Chairman Cunningham stated that the application will be approved if the sidewalks are put in, and that Ms. Fialko has a choice.

Ms. Fialko said that a sidewalk will be a big expense. Also, it will be located close to her house, taking away privacy. She also said that cars make illegal U-turns on her street and drive up over the sidewalk.

Attorney Monica Kowalski stated that the sidewalk will be a condition of approval.

Dave DeSio stated that sidewalks are a part of the building code. If you take a building down, you have to comply with today's building code.

The meeting was opened to the public.

A member of the public who identified himself as a friend of Ruth's stated that it is illegal to park cars partially on the sidewalk. He further stated that it is the side of the house with the landscaping with which Ms. Fialko is concerned.

Attorney Kowalski pointed out that parking is not required in the back of the house.

Theresa Huang, 164 Ocean Avenue, stated that "We are always trying to accommodate everybody. She is losing her property."

The public portion was closed.

Mr. Leckstein offered a motion to approve the application with the condition of installing a sidewalk and a long curb cut. A second was offered by Mr. DeSio and carried upon the following roll call:

Ayes: Bieber, Cashmore, Cunningham, DeSio, Gorman, Leckstein, DeGiulio

Nays: none

8:20 - 8:25 p.m. Break

The meeting was called to order.

Roll call: Bieber, Cashmore, Cunningham, DeSio, Gorman, Leckstein, DeGiulio

EXECUTIVE SESSION

RESOLUTION **EXECUTIVE SESSION**

Enter Executive Session:

Board member Marc A. Leckstein offered the following motion to enter into closed session and moved its adoption; seconded by Board member David DeSio .

WHEREAS, Section 8 of the Open Public Meeting Act, NJSA 10:4-12 permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist.

NOW, THEREFORE, BE IT RESOLVED by the Unified Planning/Zoning Board of the Borough of Sea Bright, New Jersey, that they meet in closed session to discuss the issues as herein set forth, and when the need for confidentiality no longer exists the decisions made therein will be made available to the public.

1. The public shall be excluded from discussion of and action upon the hereinafter specified subject matter.
2. The general nature of the subject matters to be discussed are as follows:
Legal
3. It is anticipated at this time that the subject matters will be made public, if and when confidentiality is no longer needed. Action may be taken.
4. This Resolution shall take effect immediately.

Roll Call:

Ayes: Bieber, Cashmore, Cunningham, DeSio, Gorman, Leckstein, DeGiulio
Nays: none

Close Executive Session:

BE IT FURTHER RESOLVED that the Unified Planning-Zoning Board may come back into regular session to conduct additional business.

Board member Marc A. Leckstein offered the following motion to end the closed session and enter into regular session, seconded by Board Chairman C. Lance Cunningham and adopted upon the following roll call vote.

Roll Call:

Ayes: Bieber, Cashmore, Cunningham, DeSio, Gorman, Leckstein, DeGiulio
Nays: none

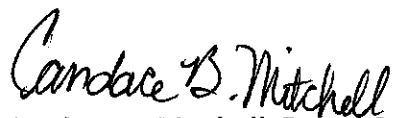
Public Comments

There being no general comments by members of the public and there being no other business before the Board, the Chairman made an announcement of the next meeting date, which is May 10, 2022.

Adjournment

The meeting was adjourned at 9:00 p.m. on a motion offered by Mr. Leckstein, seconded by Chairman Cunningham, and carried upon a unanimous voice vote by the Board members.

Respectfully submitted,



Candace B. Mitchell, Board Secretary