

**APPROVED MINUTES
REGULAR MEETING OF THE SEA BRIGHT UNIFIED PLANNING/ZONING BOARD
TUESDAY, May 23, 2023**

Call to Order and Flag Salute

Vice Chairman DeSio called the meeting to order at 7:31 p.m. and requested those present to 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, has provided adequate notice of the time, date, and location of this meeting to the Asbury Park Press on January 26, 2023, 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, DeGiulio, DeSio, Lawrence, Schwartz, Zelina

Absent: Bills, Cunningham, Kelly, Leckstein

Also attending: Board Attorney Ben Montenegro, Board Engineer David J. Hoder, Board Planner Christine Bell, and Board Secretary Candace B. Mitchell

Approval of 4/25/22 Regular Meeting Minutes

Councilman Erwin Bieber offered a motion to approve the minutes. Second was offered by Elizabeth DeGiulio, and the motion carried upon the following roll call vote:

Ayes: Bieber, Cashmore, DeGiulio, DeSio, Lawrence, Zelina

Nays: none

ITEMS OF BUSINESS

Memorialization of Resolution

RESOLUTION OF APPROVAL

**APPLICATION OF
MICHAEL BERKOWITZ**

IN THE MATTER OF	: UNIFIED PLANNING/ZONING BOARD
MICHAEL BERKOWITZ	: BOROUGH OF SEA BRIGHT
	: APPLICATION NO. 2023-03
	: BLOCK 4, LOT 7.10
	: 9 TRADEWINDS LANE

WHEREAS, MICHAEL BERKOWITZ has requested variance relief approval with variance relief pursuant to N.J.S.A. 40:55D-70 (c) (2) to construct a swimming pool and surrounding deck/site improvements on the property located at Block 4, Lot 7.10 on the tax map of the Borough of Sea

Bright, being commonly known as 9 Tradewinds Lane, Sea Bright, New Jersey, and said premises being in the R-1 Zone; and

WHEREAS, the Board held a public hearing on said application on April 25, 2023; and

WHEREAS, the applicant provided adequate notice of the hearing in accordance with N.J.S.A. 40:55D-12; and

WHEREAS, the applicant was not represented by counsel, Applicant Pro Se, presented the Application; and

WHEREAS, the Board heard the testimony and evidence presented by the applicant, applicant's witness and received no comments from the public.

NOW, THEREFORE BE IT RESOLVED, that the Unified Planning/Zoning Board of the Borough of Sea Bright, County of Monmouth and State of New Jersey, made the following findings:

1. The Board found the application complete.
2. According to the application, the applicant is seeking the following variance relief:
 - Maximum Lot Coverage where 50% maximum is allowed and 57.87% is proposed.
 - Front yard setback where 25' is required and 24.35' is proposed (existing condition).
3. Based upon the comments of the Applicant, the Board heard the following:
 - a. The Applicant proposed to construct a rear yard swimming pool with associated deck and site improvements as shown on the plans submitted.
 - b. The Applicant requested variance relief for maximum lot coverage and front yard setback (existing condition of single-family home).
 - c. The following were submitted in support of the Application:

- A1 – Borough of Sea Bright Unified Planning-Zoning Board-Certified Application, dated 3/31/23
- A2 –Borough of Sea Bright Application for Zoning Permit, dated 3/15/23 (denial)
- A3- Photos of Subject Property (2 images)
- A4- Survey by Thomas Craig Finnegan, P.L.S., dated 8/5/20 (Hand marked by Edgewater Pools/Geffrey S. Wallach, P.E.)
- A5 – Architectural Plans entitled Proposed Pool and Patio for Berkowitz Residence, (2 sheets) by Anthony Condouris, Architect (dated 3/8/23)
- A6 – Landscape Plan (Preliminary Concept Plan)
- 4/20/23 Board Engineer Report of David J. Hoder, P.E., P.P., C.M.E.

4. Based upon the sworn testimony of the Applicant Michael Berkowitz, the Board made the following findings of fact:

- a. He is the title owner of the subject property.
- b. The subject property is located in the R-1 Zone.
- c. There is an existing single-family home on the subject beachfront property. The sea wall is located in the rear yard of the property.
- d. He purchased the property in 2020, and is seeking to construct a rear yard swimming pool with associated deck together with additional site improvements (grill deck; elevated pool equipment; fencing; step stones; stairs; and landscaping) all as shown on the plans presented.
- e. There is no proposed modification to existing single family home footprint or exterior changes to the home.

5. Based upon the sworn and qualified testimony of the Applicant's Architect, Anthony Condouris, the Board made the following findings of fact:

- a. He is a licensed architect in the State of New Jersey and prepared the architectural plans for the pool, decking and site improvements submitted to the Board for approval.
- b. In preparing said plans, he inspected the premises and is fully familiar with the property and surrounding neighborhood.
- c. The Property is a beachfront property located on the east side of Tradewinds Lane. The sea wall is located in the rear yard of the lot as shown on the plans submitted.
- d. The Property is located in the R-1 zone, where 50% maximum lot coverage is permitted. The proposed plan submitted (36' x 18' pool, deck and all site improvements) proposes 57.87% lot coverage.
- e. The Property is located in the FIRM Flood Zone AE (Minimum Elevation 9.0). The elevation of the proposed deck is at elevation 10.4.
- f. There is an existing nonconformity for front yard setback where 25' is required but the existing single-family home is set at 24.35'. This is an existing condition that has existed since construction of the home. Applicant has done nothing to create the condition, nor does this application modify said condition in any way.
- g. Applicant agreed to provide a signature block for the Chairman, Secretary and Board Engineer on the plans.
- h. He confirmed that the fencing as depicted on the plan meets the Ordinance requirement that the pool fencing shall be located not less than six feet from the closest edge of the pool.
- i. Applicant agreed that the pool surround fencing (specific fence type not yet selected) shall be Ordinance and Building Code compliant for pool surround fencing.
- j. The pool equipment shall be located as depicted on the plan submitted; he confirmed same shall be elevated above the flood plain elevation.

- k. He showed a preliminary concept landscaping plan, depicting the location, size and type of plantings as part of an overall development plan for the project that mitigates/supports the proposed variance relief being requested. As same is not yet finalized, Applicant agreed as a condition to provide a final landscape plan that shall be subject to the review and approval of the Board Engineer.
- l. He noted that the existence of the sea wall on the property contributes to the overall lot coverage calculation.
- m. He noted that both the swimming pool and the deck (which is a proposed wood deck over permeable ground) are part of the overall lot coverage calculation.
- n. He opined that there are no negative impacts created by the application for the pool, deck and site improvements and that the benefits of the proposed plan from a functionality and aesthetic consideration, outweigh any detriments.

CONCLUSIONS OF LAW:

WHEREAS, after careful deliberation, the Board has determined that the applicant has met the requirements of N.J.S.A. 40:55D-70(c) (2) with conditions imposed, for the variances requested associated with this application in as much as the proposed application is an appropriate development of the subject parcel with a permitted use in the Zone; and

WHEREAS, after careful deliberation, the Board has determined that the proposal advances purposes of zoning as set forth in N.J.S.A. 40:55D-2 (a) and (i) of the Municipal Land Use Law; providing for improved aesthetics and functionality of the single-family use with a reasonable pool/deck design on this property, and those benefits outweigh any detriment from the proposal; and

WHEREAS, after careful deliberation the Board has determined that the proposed development will not have a substantial negative impact on the neighborhood and will be a benefit in terms of the function of the site for the owner, and improved aesthetics at the site; and

WHEREAS, the Board has determined that the relief sought can be granted without a substantial negative impact to the public good, provided all conditions of approval are satisfied or met; and

WHEREAS, the Board has determined that the relief sought does not impair the intent and purpose of the Master Plan or Zoning Ordinance of the Borough of Sea Bright.

NOW, THEREFORE, BE IT RESOLVED by the Unified Planning/Zoning Board of the Borough of Sea Bright, in the County of Monmouth and State of New Jersey, on the 25th day of April, 2023, upon a motion made by Mr. Lawrence and seconded by Mr. DeSio that the application of Michael Berkowitz be granted, subject to the following terms and conditions:

- a. The applicant shall be bound by all exhibits introduced, all representations made, and all testimony given before the Board at its meeting of April 25, 2023.
- b. The applicant shall provide all required Site Performance Bond and Inspection Fees in accordance with the Municipal Ordinance, if necessary.
- c. The applicant shall be responsible for obtaining any other approvals or permits from other governmental agencies, as may be required by law, including but not limited to the Municipality's and State's affordable housing regulations; and the applicant shall comply with any requirements or conditions of such approvals or permits.
- d. The applicant must comply with the Development Fee Ordinance of the Borough of Sea Bright, if applicable, which Ordinance is intended to generate revenue to facilitate the provision of affordable housing.
- e. The applicant shall comply with all items set forth in the Board Engineer report dated 4/20/23, unless specifically exempted herein.
- f. The applicant shall submit proof of payment of all real estate taxes applicable to the property and payment of all outstanding and future fees and escrow charges, posting of all performance guarantees, if any, in connection with the review of this application prior to and subsequent to the approval of this application.
- g. The applicant shall comply with all building, FEMA and fire codes including, but not limited to, entrances and exits.
- h. The accuracy and completeness of the submission statements, exhibits and other testimony filed with or offered to the Board in

connection with this application, all of which are incorporated herein by reference are specifically relied upon by the Board in granting this approval. This condition shall be a continuing condition, deemed satisfied unless and until the Board determines (on notice to Applicant) of a breach thereof.

- i. In the event that any documents require execution in connection with this approval, such documents shall not be released until all conditions are satisfied.
- j. The applicant shall pay to the municipality any and all sums outstanding for fees incurred by the municipality for services rendered by the municipality's professionals for review of the application for development, review and preparation of documents, inspections of improvements and other purposes authorized by the MLUL.
- k. No site work shall be commenced or plans signed or released or any work performed with respect to this approval until such time as all conditions of the approval have been satisfied or otherwise waived by the Board.
- l. Applicant shall comply with the following special conditions:
 - i. Applicant shall provide a signature block for the Chairman, Secretary and Board Engineer on the plans.
 - ii. The pool surround fencing (specific fence type not yet selected) shall be Ordinance and Building Code compliant for pool surround fencing.
 - iii. Applicant provide a final landscape plan that shall be subject to the review and approval of the Board Engineer.
- iv. The pool equipment shall be elevated above the flood plain elevation, as per the Sea Bright ordinance.
- v. Applicant shall submit a grading/plot plan (if required by the Building Department for compliance with Ordinance Section 130-70.)

- m. A brief notice of decision shall be published in the official newspaper of the municipality. Such publication shall be arranged by the applicant (for compliance with Ordinance Section 130-171.)

ADOPTED this 25th day of April, 2023 on a roll call upon a motion by Mr. Lawrence and a second by Board Vice-Chair DeSio

APPLICATION VOTE ON ROLL CALL:

IN FAVOR: Ms. Bills, Mr. Cashmore, Chairman Cunningham,
Ms. DeGiulio, Vice-Chair DeSio, Mr. Lawrence, Mr. Leckstein,
Mr. Zelina

OPPOSED: None

MEMORIALIZED on this 23rd day of May, 2023 on a roll call upon a motion by Ms. DeGiulio and a second by Mr. Lawrence

MEMORIALIZATION VOTE ON ROLL CALL:

IN FAVOR: Mr. Cashmore, Ms. DeGiulio, Vice-Chair DeSio, Mr. Lawrence,
Mr. Zelina

OPPOSED: None

CERTIFICATION

I, Candace B. Mitchell, Secretary of the Unified Planning/Zoning Board of the Borough of Sea Bright, County of Monmouth, State of New Jersey, do hereby certify the attached is a true copy of the Resolution for Application No. 2023-03 Approved by the Unified Planning/Zoning Board at its regular meeting on April 25, 2023 and memorialized on May 23, 2023.

Candace B. Mitchell

Candace B. Mitchell, Secretary

Borough of Sea Bright Unified Planning/Zoning Board

Application No. 2022-15 Modified

William A.G. Inc.

1106 Ocean Avenue, Bl. 13, L. 37

Seeking a modification to the preliminary and final major site plan approval that was granted on February 28, 2023 to enlarge the proposed open deck area above the second story living space from 920 sq. ft. to a 2,276 sq. ft. open deck, and to enlarge the third story rooftop room from 363 sq. ft. to a 450 sq. ft. penthouse study

Present for the application were attorney Kevin I. Asadi, Esq., and property owner Steven Gardella.

Board Attorney Ben Montenegro informed those present that the applicant's noticing has been reviewed and was found complete and satisfactory, and the Board took jurisdiction of the application.

Mr. Asadi commented that the applicant proposed to modify the plan approved by Resolution adopted on 2/28/23 to enlarge the proposed rooftop open deck area above the second story living space from 920 sq. ft. to 2,276 sq. ft. and to enlarge the third story roof top room from 353 sq. ft. to a 450 sq. ft. penthouse study. No new variance relief was required or requested for the plan modifications presented; however, the applicant is seeking re-approval of the variances previously granted for front yard setback, rear yard setback, lot coverage, and parking.

The following exhibits were submitted:

- Preliminary and Final Major Site Plan, consisting of three (3) sheets, prepared by Douglas D. Clelland, P.E. of Insite Engineering, LLC (last rev date 1/12/23)
- Architectural Plans (5 sheets) by Kevin C. Roy, Architect, LLC (dated 1/9/23)
- 3/24/23 Board Planner Report of Jennifer C. Beahm, P.P.
- 4/12/23 Board Engineer Report of David J. Hoder, P.E.

The original application proposed a rooftop open deck of 920 sq. ft. and a third-floor rooftop enclosed room of 353 sq. ft. During the course of developing final plans, the applicant revised the plans to increase the size of the rooftop deck to 2,276 sq. ft and increase the size of the third story rooftop enclosed room to 450 sq. ft. A spiral staircase to the higher deck was added.

The resolution had been adopted for Application No. 2022-15 on 2/28/23.

During the resolution compliance reviews by the Board Planner Jennifer C. Beahm and Board Engineer David J. Hoder, the increased rooftop open deck space, increased rooftop enclosed room, and addition of a spiral staircase were identified. Ms. Beahm stated that she thinks that, procedurally, this change in the plans was not done correctly, and it was agreed between the Board's professionals and applicant's professionals that these modifications were significant and required a return to the Board to seek an amended approval with legal notice to the public.

Mr. Gardella was sworn in to testify.

Vice Chairman David DeSio asked whether the deck would be used for anything other than residential use. Mr. Gardella answered that it was not going to be rented out or anything.

Dave Hoder commented that he has no problem with the changes presented. Planner Christine Bell also commented that she just wanted to make sure the changes were approved correctly.

Councilman Bieber offered comments. He noted that, at the first hearing, he had asked about adding a spiral staircase. He thought it was strange that there was no staircase up to the second level. The applicant and attorney had requested a break to confer and came back with something different. The applicant came back in with a very large request, and it seemed like that is what was intended to begin with. Councilman Bieber said this large a request is very strange from where we started and where we're ending, that it happened incrementally, and it almost felt intentional, and that feels disingenuous to him.

Mr. Asadi stated there was no design to have it play out that way, that the applicant hadn't thought of before, and it came up that way. It was certainly not done in a deliberate attempt to be disingenuous to the Board.

Councilman Bieber noted that he doesn't have a problem with it, but it seems strange that the applicant planned for a rooftop deck with no way to get up to it. Also, he wondered if increasing the rooftop deck size from 900 to 2,200 sq. ft. could create weight concerns.

Dave DeSio commented that plans will be submitted to the Building Department for structural approvals that go to the Borough Engineer. Safety concerning weight would be part of that review process.

Frank Lawrence discussed the need for a lighting plan.

Stephen Cashmore expressed concerns of the apartment becoming an Air BnB, and Mr. Gardella assured him he was not going to have an Air BnB. Mr. Cashmore asked, what if the property is sold? He would like to see restrictions in the resolution. He also discussed the occupancy. What is reasonable, and what would be considered out of control?

Engineer Christine Bell offered that occupancy would be set by the zoning ordinance.

Councilman Bieber asked about ordinance enforcement. He is concerned with safety. 2,200 sq. feet accommodates a lot of people, and he asked Engineer Dave Hoder if he can determine the weight restriction.

Dave DeSio offered that the Building Inspector does that. The structural engineer has to calculate it. It is not for the Board Engineer to do. Dave Hoder said that the weight limit is done by the architect and the Building Department is supposed to review it.

Mr. Cashmore would like to see something in the resolution that specifies a limit to the number of people that can be on the roof deck.

Board Attorney Ben Montenegro said conditions will be added into the resolution. The roof will have to comply with all building code requirements. Also, there will need to be a maximum limit to the number of people on the roof deck and until what hour. Mr. Hoder

said the resolution can be set up so that the number of people allowed on the rooftop deck has more to do with zoning and planning than it does with structural so that it takes the Board out of the realm of calculations.

Dave DeSio added that this number is calculated by area. The load above has to be calculated all the way through to the footings, and things may have to be added. There may have to be a new header. Calculations have to be submitted to the Building Inspector in accordance with Sea Bright's building code to prove the adequacy of the deck.

Elizabeth DeGiulio commented she would like to see the 10:00 p.m. noise ordinance enforced.

There were no additional comments nor questions from the Board and no one in the public wishing to speak.

Stephen Cashmore offered a motion to approve the requested modifications to the original site plan. Councilman Bieber offered a second, and the motion carried upon the following roll call vote:

Ayes: Bieber, Cashmore, DeGiulio, DeSio, Lawrence, Schwartz, Zelina

Nayes: none

Other Business

The annual meeting schedule has been modified for June and July. The June meeting will take place on June 27th instead of June 13th. The July meeting will take place on July 25th instead of July 11th. Notice has been provided to the Asbury Park Press and the Two River Times.

Public Comments

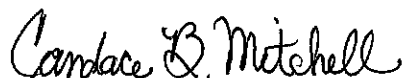
There were no members of the public wishing to speak.

CLOSING ITEMS

The Vice Chairman announced the next regular meeting to take place on June 27, 2023.

With no further business, the meeting was adjourned at 8:07 p.m. on a motion offered by Councilman Bieber, seconded by Ms. DeGiulio, and carried upon a unanimous voice vote by the Board members.

Respectfully submitted,



Candace B. Mitchell, Board Secretary