RESOLUTION

KEANSBURG PLANNING BOARD OF ADJUSTMENT
ALEXANDER BRAYLOVSKY / TETYANA KULIY
45 OCEAN BOULEVARD
KEANSBURG, NJ
BLOCK 33, LOT 6
APPLICATION NO.:

INTRODUCTION

WHEREAS, Alexander Braylovsky and Tetyana Kuliy have submitted an Application to the Keansburg Planning Board of Adjustment for the property designated as Block 33, Lot 6, commonly known as 45 Ocean Boulevard, Keansburg, NJ, within the Borough's R-5 Zone for the following approval:

- Bulk Variances associated with a request to construct a new single-family home, with ground level garage, and pool.

PUBLIC HEARING

WHEREAS, the Board held a Public Hearing on or about July 10, 2023, Applicants having filed proper proof of service and publication in accordance with Statutory and Ordinance Requirements; and

EVIDENCE / EXHIBITS

WHEREAS, at the said Hearing, the Board reviewed, considered, and analyzed the following:

- *Planning Board of Adjustment Application Package, dated March 27, 2023, introduced into Evidence as A-1;*
- *Keansburg Zoning Officer Denial Letter, dated February 27, 2023, introduced into Evidence as A-2;*

- *Site, Grading, and Variance Plans, prepared by D. S. Engineering, P.C., dated February 6, 2023, consisting of 1 sheet, introduced into Evidence as A-3;*

- *Architectural Plans, prepared by Michael Savarese Associates, dated September 30, 2022, last revised March 8, 2023, consisting of 6 sheets, introduced into Evidence as A-4;*

- *Survey of property, prepared by Lakeland Surveying, dated June 14, 2017, consisting of 1 sheet, introduced into Evidence as A-5;*

- *T&M Associates Review Memorandum, dated June 29, 2023, introduced into Evidence as A-6;*

- *Illustrated Rendering, prepared by Michael Savarese Associates, dated July 10, 2023, consisting of 2 sheets, introduced into Evidence as A-7;*

- *Page 55 of a Resolution of Conditional Approval for the Pat and Patricia Rochio file (Block 33, Lot 6) (41 Ocean Avenue), Keansburg, NJ, introduced into Evidence as P-(Ivan Gordon)-1;*

- *Affidavit of Service; and*

- *Affidavit of Publication;*

WITNESSES

WHEREAS, sworn testimony regarding the Application were presented by the following:

- Michael Savarese, Architect;
- Tammy Caron, Architectural Representative;
- Alexander Braylovsky, Applicant, appearing pro se;
- Tetyana Kuliy, Applicant, appearing pro se;

WHEREAS, Robert Yuro, P.E., CME, the Board Engineer, was also sworn with regard to any testimony / information he would provide in connection with the Application; and

WHEREAS, Edward Striedl, Municipal Zoning Officer / Construction Official, was also sworn with regard to any testimony / information he would provide in connection with the subject Application; and

TESTIMONY AND OTHER EVIDENCE SUBMITTED ON BEHALF OF THE APPLICANTS' REPRESENTATIVES

WHEREAS, testimony and other evidence presented on behalf of the Applicants' Representatives revealed the following:

- The Applicants herein are the Owners of the subject property.
- The Applicants have owned the subject property since approximately August of 2022.
- Previously, a single-family home existed on the subject property.
- The home at the site was previously demolished / removed.
- The 7,500 SF parcel is now vacant.
- There are certain natural and man-made issues which complicate any potential development of the site.
- The development complications, as aforesaid, include, but are not limited to, the following:
    - The property fronts on / along Ocean Boulevard (Beachway Avenue), which is an unimproved roadway / paper street;
    - The subject property is also located in the immediate vicinity of the Bay;
    - The property is located in a flood zone;
    - The property is subject to prevailing NJDEP / CAFRA restrictions / limitations;
    - An access Easement / Right-of-Way runs along the rear portion of the property (which serves as an access route for the subject property, and other properties, in the immediate area).
- The limitations, as aforesaid, restrict some aspects of the development associated with the existing parcel.

- The Applicants' Representatives propose to construct a single-family home on the site.

- It is anticipated that the proposed home will serve as the Applicants' future home.

- Details pertaining to the proposed home, include the following:

Use:	Single-family home
Size:	Per Plans
Location:	Center portion of Lot (generally)
Orientation:	Per Plans
Number of Stories:	3
Height:	38.33 ft.

  - Vehicular Access Process: Vehicular Access to the new home will be through the existing rear-yard access Easement (i.e., the way the prior home at the site was accessed, and the way other homes in the unique neighborhood are similarly accessed). That is, the Applicants will not access the property via / from the paper street (Beachway) Boulevard (the unimproved roadway / paper street).

- The Applicants will not access the site via the existing unimproved roadway / paper street, unless the Borough of Keansburg formally authorizes use of the roadway or formally improves the unimproved roadway / paper street.

- The proposed home will include the following:

Ground Level

2-Car Garage
Storage Area
Storage Area
Pool Storage Area
Bathroom Area
Coat Area
Firepit

First Floor

Primary Bedroom
Primary Bathroom
Laundry Room
Bedroom
Bedroom
Bedroom
Bathroom
Bathroom
Deck
Balcony

Second Level

Dining Room
Kitchen
Deck
Pantry
Living Room
Guest Room
Bathroom
Powder Room

Top Level

Roof Deck

- Materials for the proposed home (in addition to those details set forth on the Plans) include a wood-like siding and a stone veneer.

- Many rooms in the new home will have a view of the adjacent Sandy Hook Bay and the New York City skyline.

- The new home will be fully sprinklered.

- As indicated, the Applicants are proposing to install a pool as well.

- Details pertaining to the proposed pool include the following:

Type of Pool:	In ground
Size of Pool:	Approximately 10' X 20'
Location of Pool:	Per Plans

- As indicated, the Applicants are also proposing to construct a garage on the site.

- Details pertaining to the proposed garage include the following:

Type of Garage:	Attached (ground level)
Size of Garage:	21' X 30'
Location of Garage:	Ground level of home
Number of Stories:	1
Number of Bays:	2

- The Applicants anticipate commencing the construction process in the near future.

- The Applicants will be utilizing Licensed Contractors in connection with the building process.

VARIANCES

WHEREAS, the Application as submitted, and amended, requires approval for the following Variances:

GENERAL RELIEF: Per the prevailing Zoning Regulations, no building or structure shall be moved, altered, added to, enlarged, etc., unless the same is in conformance with all of the specified Zoning Regulations.

BUILDING HEIGHT: Maximum 35 feet allowed; whereas 38.33 feet proposed;

NUMBER OF STORIES: Maximum 2 ½ stories allowed; whereas 4) 3 stories proposed;

PUBLIC STREET FRONTAGE: Prevailing Regulations may potentially require that a new home be built on a lot which abuts a public street. However, in the within situation, the Applicants propose to build a new home which does not technically abut a public street.

PUBLIC COMMENTS

WHEREAS, public questions, comments, concerns, statements, endorsements, and / or objections were presented by the following:

- Thomas Rooney
- Mary Reines
- Ivan Gordon
- Pat Rocchio

FINDINGS OF FACT

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of Adjustment of the Borough of Keansburg, after having considered the aforementioned Application, plans, evidence, and testimony, that the Application is hereby **approved / granted with conditions.**

In support of its decision, the Board of Adjustment makes the following Findings of Fact and Conclusions of Law:

1. The Keansburg Planning Board of Adjustment has proper jurisdiction to hear the within matter.

2. The subject property is located at 45 Ocean Boulevard (Beachway Avenue), Keansburg, NJ, within the Borough's R-5 Zone.

3. The subject property contains a vacant lot.

4. The existing vacant lot has frontage on Ocean Boulevard (Beachway Avenue), which is an unimproved roadway / paper street.

5. A single-family home previously existed on the site (but was previously removed / demolished).

6. The Applicants are proposing to construct a new single-family home on the site.

7. Such a proposal requires approval for several Bulk Variances.

8. The Keansburg Planning Board of Adjustment is statutorily authorized to grant such relief and therefore, the matter is properly before the said entity.

9. With regard to the Application, and the requested relief, the Board notes the following:

LEGAL STANDARDS

- As indicated, the Applicants herein are essentially, requesting permission to effectuate the following:

  Construction of a single-family home on the site, with garage and pool.

- As referenced, such a proposal requires Bulk Variance relief.

- The Land Use Board is aware that the legal standards which need to be satisfied in order to justify Variance relief.

- In furtherance thereof, the Board is aware that, generally speaking, and depending on the nature of the relief sought, in order to satisfy the Variance Standards, the Applicants must prove the so-called "positive" criteria and the so-called "negative" criteria. Towards that end, the so-called "positive" criteria require the Applicants to prove that the Application satisfies / advances certain purposes of zoning, as set forth in the Municipal Land Use Law. Likewise, the so-called "negative" criteria require the Applicants to prove that the Application can be granted without causing substantial detriment to the public good.

- Additionally, with regard to the Bulk Variances, the Board is aware that, generally speaking, the Applicants need to prove either that:

  a. The subject property has a unique shape / topography, etc., which, essentially, constitutes a hardship; or

  b. The benefits of granting the variance relief outweigh any potential detriments associated therewith.

- The Keansburg Planning Board of Adjustment has adjudicated the within Application in accordance with the aforesaid applicable standards. That is, in rendering its decision, and in adopting the within Resolution, the Board Members have appropriately applied the facts of the within Application / site to the relevant legal standards.

- The Board is aware that the within list of standards is not exhaustive – and that there are, generally speaking, other applicable standards as well. The Board is also aware that the multi-faceted nature of the relief associated with the within Application also involves a number of to-be-combined standards, which are subject to nuance by prevailing case law. The inclusion or absence of any specific standard identified herein is not intended to, and should not be interpreted as, compromising the Board's good faith analysis of the overall Application.

UNIQUE PROPERTY CONDITIONS

- The property is subject to a number of natural and man-made conditions which limit, or otherwise compromise, development options otherwise associated with the subject property.

- Some of the aforesaid conditions / restrictions include, but are not limited to, the following:

  - The property fronts on / along Ocean Boulevard (Beachway Avenue) which is an unimproved roadway / paper street;

  - The subject property is also located in the immediate vicinity of the Sandy Hook Bay.

  - The property is located in a flood zone.

  - The property is subject to prevailing NJDEP / CAFRA restrictions / limitations.

  - An access Easement / Right-of-Way runs along the rear portion of the property (which serves as an access route for the subject property and other properties in the immediate area).

- A detailed review of the submitted Plot Plan, Site Plan Renderings, and Survey clearly reflect the unique property conditions, and the inter-play of the same.

- Any one of the aforesaid conditions / situations could legitimately cause development-related problems / hurdles – and the combination of the same definitely complicates the overall development process associated with the site.

- The combination of the aforesaid issues, uniquely affects the subject piece of property.

- The combination of the aforesaid conditions, as referenced above, limits development options / building options otherwise available to the Applicants.

- The existence of the aforesaid conditions constitutes a hardship as the term is loosely defined in the New Jersey Municipal Land Use Law and / or Case Law associated therewith.

- The existence of the combination of the aforesaid conditions, as referenced above, uniquely affects the subject property.

- The existence of the aforesaid conditions and the hardships associated therewith, help justify the requested Bulk Variance relief.

UNIMPROVED ROADWAY / PAPER STREET

- The subject property does not abut a traditional public road.

- Rather, per the testimony in Evidence presented, the property fronts on Ocean Boulevard (aka Beachway Avenue), which is an unimproved roadway / paper street, located on / along the northern / front portion of the property.

- Per the documents / site plans / surveys submitted, and as referenced earlier, a number of homes on the subject street also have frontage along the said unimproved roadway / paper street.

- Per the testimony and Evidence presented, the unimproved roadway basically consists of a sandy material.

- Notwithstanding the physical existence of the unimproved roadway / paper street, the existing / functional access to the site is via the Access Easement / Right-of-Way located on the rear portion of the subject property.

- The Board is also aware that, as modified, the access to the home approved herein will be via the existing Access Easement / Right-of-Way located on the rear portion of the subject property, just as such vehicular access was gained for the prior home which existed on the site (and just how access is gained by many of the other homes in the immediate area.)

- Additionally, as an express condition of the within approval, the Applicants (and successor Owners / Occupants) are obligated to refrain from such vehicular access to the site via the unimproved roadway / paper street (unless the same is formally authorized by the Borough of

Keansburg or unless the Borough of Keansburg, or Agent thereof, improves the said unimproved roadway / paper street).

- The said condition was reassuring to some of the Board Members / Representatives.

RELATION TO PUBLIC STREET

- Per New Jersey Law, in the absence of special circumstances, an Applicant is generally required to construct a single-family home which abuts a traditional public street.

- As indicated, the subject parcel does not abut on a traditional public road.

- Rather, as indicated, the property abuts an unimproved roadway / paper street (along the northern / front portion of the property).

- Per the testimony, evidence, and arguments presented to the Board, such a proposal may require relief.

- There was an intense on-the-record discussion relative to the nature of the relief which would be required.

- The Board is aware that vehicular access to the new home approved herein will be the same as the vehicular access to the prior home which existed on the site.

- The Board is also aware that as modified, vehicular access to the new home (approved herein) will be the same as the vehicular access for other houses in the immediate area.

- The Board is also aware that as modified, access to the new home approved herein will continue to be via the Access Easement / Right-of-Way located along the rear portion of the property, just as vehicular access was gained for the prior home which existed on the site (and for other homes which are serviced by the existing Access Easement area).

- The fact that a single-family home previously existed on the site highly suggests the appropriateness of having the new replacement single-family home accessed in the exact same fashion.

- The access of the new home approved herein will not be materially different for how prior homes at the site have been accessed.

- As a condition of the within approval, the Applicants' plans shall be reviewed and approved by the Municipal Fire Officials, so as to further

confirm that emergency vehicles can safely / sufficiently / appropriately access the site.

HEIGHT VARIANCE

- The Application as presented requires a height variance.

- The Board is aware that height variances are treated rather uniquely under the New Jersey Municipal Land Use Law, and associated case law.

- Under the New Jersey Municipal Land Use Law, a height variance can be a bulk variance under section "c" of the prevailing statute, or the same can be a use variance under section "d" of the Statute. Specifically, if the height deviation of the principal building exceeds 10 ft. or 10 percent of the allowable height, then, in that event, the height variance requires use / "d" variance relief (which involves / implicates a higher and more intense legal criteria / standard than that for Bulk "c" relief). Likewise, if the principal height deviation is less than 10 ft. or 10%, then, in that event, the Applicants will be required to obtain bulk "c" height variance relief. As submitted, the Application required a variance for a height of 38.33 ft., (for the proposed building) whereas, the maximum allowable height in the R-5 Zone is 35 ft. Thus, the height deviation in the within situation is less than 10 ft. / 10% and, as such, the requested height variance requires bulk "c" variance relief (under Section "c" of the prevailing statute.)

- As referenced, the Application, requires height variance relief. Specifically, a maximum principal building height of 35 ft. is allowed; and 38.33 ft. is proposed.

- Notwithstanding that the height deviation requires bulk "c" variance relief (as opposed to use / "d" variance relief), the Applicants still have to satisfy a formidable legal standard.

- The Applicants' representatives essentially testified that the 38.33 ft. height of the buildings is necessary for aesthetic reasons and functional reasons. Additionally, the requested height will allow for sufficient space for a ground level garage, the same will allow for sufficient on-site parking spaces, the same will allow the structure to comply with Prevailing Flood Regulations, and the same will provide nice views of the nearby Sandy Hook Bay. A majority of the Board has accepted and endorsed and accepted such concepts.

- As referenced elsewhere herein, the Board Members also balanced the benefits of the Application against the potential detriments associated

therewith – and the height analysis was appropriately factored into the equation as well.

- For all the reasons set forth herein, and otherwise set forth during the public hearing process, the Board finds that the height variance (for the new principal single-family structure) can be granted without causing substantial detriment to the public good (and in conjunction with other applicable legal standards.)

- The Planning Board of Adjustment Members were of the belief that the height deviation approved herein is appropriate, particularly in conjunction with the fact that there will be sufficient parking spaces dedicated for the proposed single-family home.

- As indicated, the maximum allowable height in the Zone is 35 ft.; whereas 38.33 ft. is approved herein. Under the circumstances, the 3.33 ft. height deviation is non-offensive.

- Under the circumstances, and the Prevailing Flood Elevation Requirements, the Board finds that the 3.33 ft. height deviation is relatively de-minimus.

- The excess 3.33 height deviation approved herein will more easily / comfortably allow the Applicants to satisfy prevailing flood elevation requirements, and to allow for a sufficient amount of parking spaces on the site, as well.

- The height approved herein will help keep the project viable, and the same will simultaneously allow the proposed development to comfortably accommodate at least 4 off-street parking spaces.

- Per the testimony and evidence presented, the height of the proposed building will not be out of character from other buildings / structures in the immediate neighborhood (including the immediate adjacent property).

- The height deviation approved herein will not be materially discernable to the naked eye, particularly in light of the surrounding structures / uses.

- For the reasons set forth herein, and as set forth during the Public Hearing process, the Board finds that the requested Height Variance can be granted without causing substantial detriment to the public good.

- Excessive building height is usually a sign of over-development. However, the Board notes that, in the within situation, there is no over-development proposed / approved, as evidenced by the generally compliant setbacks and coverages.

- Initially, when confronted with a Height Variance, the Board should attempt to ascertain if, in fact, the plans can be modified so as to eliminate or even reduce the need for any type of relief.

- The Board Members essentially presented a series of questions / concerns to the Applicants' representatives, in the hope of ascertaining if the plans could be modified so as to eliminate the need for any Height Variance.

- In response, the Applicants' development team essentially advised that even a relatively minor height reduction would likely compromise the overall functionality / aesthetic appeal / integrity / flood compliance. Thus, the Applicants' representatives petitioned the Board for the Bulk "c" Height Variance relief identified herein.

- The Board Members accept the aforesaid arguments from the Applicants' development team relative to the Height Variance.

- The Board notes that, per the testimony and evidence presented, per Prevailing FEMA Regulations, the Applicants, essentially, must commence the construction at approximately 15 ft., which further complicates the ability of the Applicants to satisfy the Prevailing Height Standards.

- The Board is also aware that the Applicants' proposal includes an elevator tower.

- The Board also notes that, per the testimony and evidence presented, the original home on the site presumably had a height of less than 25 ft.; whereas, as amended, the new home approved herein will have a height of 38.33 ft.

- In conjunction with all of the above findings, the Board has determined that the requisite Height Variance can be granted without causing substantial detriment to the public good.

MLUL Purposes

- The Zoning Board is aware, that, generally speaking, in order to be entitled to some form of Variance relief, the Applicants' representatives must prove that the Applicants will satisfy and/or otherwise advance one of more purposes of the Municipal Land Use Law (i.e. the so-called "positive" criteria).

- The intent and purposes of the Municipal Land Use Law are set forth, in detail, in NJSA 40:55D-2.

- Purpose "a" of NJSA 40:55D-2 provides the following:

To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare.

As referenced quite extensively elsewhere herein, the Board finds that the construction of a permitted single-family use, in a single-family Zone, will, in fact, promote the general welfare.

- Section "b" of the aforesaid section of the Municipal Land Use Law is as follows:

To secure safety from fire, flood, panic, and other natural and man-made disasters.

Towards that end, the Board notes that the permitted single-family home approved herein will be constructed in accordance with prevailing / modern Buildings / Construction / Fire Code requirements. That is, the new home will be equipped to meet all existing Fire Code Requirements. Also, the new structure will be wind-rated and fire-rated. The new building will be constructed using modern technology and fire-retardant materials, when possible. As a result, the Board finds that approval of the within Application will certainly help improve / secure / promote fire-related safety at the site.

- It appears that the existing site / and any structure located therein is susceptible to major storm damage due to its proximity to the water-front. However, the permitted single-family use approved herein will be constructed in accordance with prevailing FEMA / flood regulations. As such, the Board can, and does, find that approval of the within Application will help secure public safety from flood and other natural water-related and wind-related disasters.

- The aforesaid flood / water / wind improvements are even more significant / important, given the proximity of the development site to the nearby Atlantic Ocean / Bay.

- Purpose "c" of the aforesaid section of the Municipal Land Use Law is as follows:

To provide adequate light, air, and open space.

- The Board notes, respectfully, that the subject Municipal Land Use Law purpose does not require one to provide "perfect" or "abundant" or "excessive" light, air, and open space; but rather, the exact language of the specified MLUL purpose references a goal of providing "adequate" light, air, and open space. For reasons set forth herein, namely that the

Application deals with a single-family home in a single-family Zone, the Board finds that the aforesaid purpose is advanced by the within approval.

- Purpose "e" of the aforesaid section of the Municipal Land Use Law is as follows:

> *To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities, and regions, and preservation of the environment.*

- The Application as presented and modified certainly advances such a purpose. As set forth elsewhere herein, in detail, the Board is merely approving a single-family home in a Zone which does, in fact, permit single-family homes.

- Purpose "e" of the Municipal Land Use Law, as referenced above, also asserts the importance of approving Applications which promote the preservation of the environment. The Board finds that approval of the within Application will advance environmental interests in a number of ways, including, but not limited to, the following:

  i. The single-family home approved herein will generally be constructed on / over land which was previously / presumably already developed (and hosted the previously existing home at the site).

  ii. There are benefits with providing residents with another / new housing options in the Borough.

  iii. There is value in restoring the subject property to productivity.

- Purpose "g" of the aforesaid section of the Municipal Land Use Law is as follows:

> *To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial, and industrial uses, and open space, both public and private, according to their respective Environmental Requirements in order to meet the needs of all New Jersey citizens.*

The Board finds that replacement of a single-family home in a Zone which allows single-family uses, is an appropriate location for the Applicants' proposal.

- Purpose "h" of the aforesaid section of the Municipal Land Use Law is as follows:

  > *To encourage the location and design of transportation routes which will promote the free-flow of traffic, while discouraging location of such facilities and routes which result in congestion or blight.*

- As extensively presented during the Public Hearing process, the Applicants' Representatives revised the Plans so as to continue the vehicular access routes which have existed (at the site) for quite a long time (and which were utilized by the prior single-family home at the site).

- The design approved herein will not materially compromise the existing traffic patterns in and around the site.

- Purpose "i" of the aforesaid Section of the Municipal Land Use Law is as follows:

  > *To promote a desirable visual environment through creative development techniques and good civic design and arrangement.*

  As set forth rather extensively elsewhere herein, the approval of the within Application, and the construction of a brand-new, Code-compliant single-family home at the site will, by all accounts, result in a marked visual / aesthetic improvement (from the current undeveloped site).

- The visual / aesthetic improvements (associated with the construction of a single-family home at the site) will significantly improve the overall visual appeal / curb-appeal / aesthetic appeal of the subject property.

- The dramatic visual and architectural improvements associated with the within approval of the within Application will be beneficial for the site, the neighborhood, and the community as a whole.

- The significant aesthetic improvements associated with the within Application help justify the overall approval of the subject Application.

- Construction of the permitted single-family structure approved herein will promote a desirable visual environment, as specifically encouraged / identified in section "i" of N.J.S.A. 40:55D-2.

- Section "i" of the aforesaid MLUL purposes also references the importance of "creative development techniques" and "good civic design and arrangement." The aforementioned aspect of the purpose is quite important. The construction of a brand-new and Code-compliant single-

family structure, which successfully navigates the flood, access, and easement issues is creative and does, in fact, represent and constitute "good civic design arrangement."

Goals and Objectives of the Master Plan

- The Keansburg Master Plan contains several goals and objectives.
- The ability of an Applicant, any Applicant, to advance, satisfy, promote, or fulfill any of the aforesaid goals and objectives is important and beneficial.
- One goal / objective of the Master Plan is, essentially, to encourage and promote economic development. Towards that end, the Board finds that approval of the within Application (i.e. the construction of a permitted single-family use) will, in fact, promote and encourage appropriate economic development within the Borough of Keansburg.
- One goal / objective of the Master Plan is, essentially, to preserve the character of the community. Given the nature of the R-5 Zone, given the nature of the surrounding residential uses, the Board finds that approval of the within Application (for a single-family home) will help preserve the residential character of the community.
- One goal / objective of the Master Plan is, essentially, to provide a broad range of housing options for Keansburg residents. The Board finds that approval of the within Application will provide Keansburg and other area residents with another form of year-round occupancy options which will, in fact, promote the interests of the public, as well as the aforesaid Master Plan goals / objectives.

GENERAL

- The single-family use proposed herein is a permitted use in the R-5 Zone.
- Subject to the conditions set forth herein, the subject Lot is an appropriate host site for a single-family home.
- Continued single-family use at the site is appropriate.
- As a condition of the within approval, the Applicants will be presenting the Board Engineer with Grading / Drainage Plans, so as to confirm that water run-off will not adversely impact adjacent property owners.

- The construction of a brand-new home on the site will result in a significant aesthetic improvement.

- The construction of a brand-new single-family home at the site, which complies with all Prevailing Building and Construction Codes, will be beneficial for the Borough of Keansburg and the neighborhood.

- Per the testimony and evidence presented, the front setback, side, and rear setbacks approved herein are compliant, generally (and presumably) consistent with other setbacks on similarly sized Lot in the neighborhood.

- The front setback, side setback, and rear setbacks approved herein for the new construction home are generally consistent with that which existed with the former structure on the property.

- Per the testimony presented, the home approved herein will have an elevation which is consistent with prevailing Flood Regulations.

- The elevation of the proposed home should likely reduce the risk of future storm damage at the site.

- Subject to aesthetic concerns, Zoning concerns, and standards of reasonableness, there is a legitimate Borough-related interest in having homes / structures built in a manner which may likely withstand major damage from future storms and / or from future storm-related surges.

- The new home approved herein will satisfy all prevailing / updated Building Code Regulations, Construction Code Regulations, and Flood Regulations.

- Approval of the within Application will not materially change the historic single-family nature of the lot.

- Approval of the within Application will not materially change the intensity of the previously existing / continued single family use at the site.

- The home approved herein is in the same presumed general location as the previously existing home was located.

- Construction of a brand-new code-compliant and flood-compliant home is consistent with the Borough's Master Plan.

- Approval of the within Application will markedly improve the overall aesthetic appeal / curb appeal of the property (in that the existing property is currently vacant).

- Subject to the conditions contained herein, the single-family home approved herein will not overpower or overwhelm the site, or the neighborhood.

- Approval of the within Application will not appreciably change the nature of the historic single-family use at the site.

- The proposal approved herein is reasonable, given the site constraints, given the nature / location of the prior home and the new home, and given the Requirements of the Revised Flood Regulations.

- Subject to the conditions contained herein, the proposed new home will not have any significant detrimental impact on adjoining property owners.

- Subject to the conditions contained herein, approval of the within Application will improve the overall appearance of the area.

- Approval of the within Application will result in the construction of a new home which will be better able to withstand damage from future flooding.

- Additionally, the architectural / aesthetic benefits associated with the proposal outweigh the detriments associated with the Applicants' inability to comply with all of the specified Bulk Zoning Standards.

- Subject to the conditions set forth herein, the benefits associated with approving the within Application outweigh any detriments associated with the same.

- Approval of the within Application will have no known detrimental impact on adjoining property owners and, thus, the Application can be granted without causing substantial detriment to the public good.

- Approval of the within Application will promote various purposes of the Municipal Land Use Law; specifically, the same will provide a desirable visual environment through creative development techniques.

- The Application as presented satisfies the Statutory Requirements of N.J.S.A. 40:55D-70(c) (Bulk Variances).

- The new building approved herein will be fire-suppressed, in accordance with Prevailing / modern Construction / Building Code regulations.

- The subject development site involves a nice piece of real estate within the town – located very close to the Atlantic Ocean / Bay.

- The single-family home approved herein has been designed to have views of the Atlantic Ocean, Bay, and New York City skyline, – and the Board certainly understands and appreciates the benefits associated therewith.

- The Board Members certainly understand that modern design and planning certainly encourage the design of residential units which have a water view, and a view of the NYC skyline, when possible.

- One of the great natural resources of the Keansburg area is access to, use of, view of, and appreciation of, the Atlantic Ocean / Bay – and approval of the within Application will appropriately incorporate use of, appreciation of and a view of the Ocean / Bay.

- Approval of the within Application will dramatically improve the overall appearance of the site.

- Subject to the conditions contained herein, the development approved herein will have a positive aesthetic impact on the site and the community.

Better Overall Zoning Alternative

- In adjudicating the within Application, it is appropriate for Board Members to consider "what represents a better overall zoning alternative for the Borough of Keansburg". The aforesaid analysis weighed very heavily on the minds of some Board Members. The aforesaid analysis also caused many Board Members to publicly debate the overall merits of the Application. The issue of determining what represents a better overall zoning alternative for the Borough of Keansburg was of critical importance to the Board Members. The said Application was seriously debated / analyzed by the Board Members, based upon the testimony and information presented, based upon the legal arguments offered, and based upon the associated public comments. The said analysis was intense, thought-provoking, and challenging, and the same involved a very unique set of facts. The analysis was not easy – and the adjudication process was not lightly undertaken by the Planning Board Members. Based upon the facts of the case, and given the existence of many other single-family homes in the immediate area, and given the very unique features associated with the subject property (including the flood zone issues, the access easement issues, the public street issues, etc.), the Board finds that the within proposal clearly represents a better overall zoning alternative for the Borough of Keansburg.

- Given all of the above-referenced facts, the Board finds that approval of the within Application will positively impact the site, the neighborhood, and the community at large.

Installation of a Fire Suppression System

- There was a rather intense discussion regarding the unique nature of the subject property, and the fact that the same does not front on a public road. There was a further discussion regarding the potential difficulties the Borough's Emergency Vehicles could have in accessing the site, as a result of the sandy nature of the unimproved Right-Of-Way / Paper Street. As a result of the above, out of an abundance of caution, and so as to minimize the possibility of any individual homeowner, occupant, guest, emergency personnel sustaining injury or death, the Applicants have agreed to install a fire suppression system in the home.

- The installation of a fire suppression system at the home, under the within circumstances, is appropriate and necessary.

- The installation of the fire suppression system, as aforesaid, is a very important condition of the within approval – and but for the same, the within Application would not have been approved.

- The fire suppression system, as aforesaid, is a life-affirming feature of the within proposal, particularly in light of the unique physical features associated with the subject property.

- The installation of the fire suppression system, as aforesaid, will promote the health and safety of all involved.

- The installation of the fire suppression system, as aforesaid, will help secure the public from the threat against a potential fire, etc.

- The installation of the fire suppression system, as aforesaid, clearly and significantly advances the public interest.

- The installation of the fire suppression system, as aforesaid, advances the health and safety interest of the Applicants, future owners, future occupants, and the Borough's existing / future emergency personnel.

Mitigating Conditions of Approval

- After an extensive Public Hearing process, a majority of the Board Members voted to conditionally approve the Application.

- Many of the reasons for the approval were set forth on the record (during the Public Hearing process), and are also more formally set forth herein.

- Importantly, the Board also imposed several significant conditions on the approval.

- Some of the aforesaid conditions of approval include the following:

    a. *A Requirement that the Applicants not access the site (for vehicular purposes) from the unimproved roadway / paper street (unless the Borough of Keansburg, or other agent thereof, formally authorized the same or authorized the physical improvement of the said unimproved road / paper street).*

    b. *A Requirement that the aforesaid vehicular access restriction be memorialized in the form of some type of recorded Restriction;*

    c. *A Requirement that there will be no additional bedrooms at the site, absent further approval of the Land Use Board (because of the potential impact the same could have on parking, etc.).*

- The Applicants' representative, on the record, consented to the referenced conditions of approval.

- The aforesaid conditions, among other conditions, are memorialized in the within Resolution.

- The Board finds that the imposition of the aforesaid conditions mitigates some of the potential detriments otherwise associated with the within Application.

- The Board finds that the imposition of the aforesaid conditions will minimize any adverse impact otherwise associated with the within development.

- The Board finds that the imposition of the aforesaid conditions will allow the subject proposal to more appropriately blend in with the residential neighborhood / community.

- The Board finds that the imposition of the aforesaid conditions will promote the privacy interests of the future owners / occupants, as well as the privacy interests of the neighboring property owners.

- The Board finds that the imposition of the aforesaid conditions will allow the site to operate in a more benign fashion than what was initially proposed.

- The Board finds that the imposition of the aforesaid conditions will aesthetically improve the overall proposal.

- The Board finds that the imposition of the aforesaid conditions will minimize the overall impact associated with the proposal.

- The Board finds that the imposition of the aforesaid conditions will minimize the overall visual impact of the within approval.

Based upon the above, and subject to the conditions contained herein, Board is of the opinion that the requested relief can be granted without causing substantial detriment to the public good.

CONDITIONS

During the course of the Hearing, the Board has requested, and the Applicants' Representatives have agreed, to comply with the following conditions: (Note: Unless otherwise indicated, all Plan Revisions shall be subject to the review and approval of the Board Engineer.)

a. The Applicants shall comply with all promises, commitments, and representations made at or during the Public Hearing Process.

b. The Applicants shall comply with the terms and conditions of the T&M Associates Review Letter, dated June 29, 2023 (A-6).

c. The Applicants shall cause the Plans to be revised so as to portray, confirm, and include the following:

   - The inclusion of a note / clarification so as to provide / include the utility details on the Plans;

   - The inclusion of a note / clarification confirming that the building will be fully sprinklered;

   - The inclusion of a note / clarification confirming that the Applicants shall arrange to trim back and otherwise maintain the overgrown landscaping in the Easement area (if permitted to do so under the Easement Terms);

- The inclusion of a note / clarification confirming that there shall be no more than 5-bedrooms in the home, unless specifically authorized by the Keansburg Planning Board of Adjustment;

- The inclusion of a note / clarification confirming that there shall be no planting within the 10 ft. Easement area (unless Easement Regulations so allow);

- The inclusion of landscaping details, which shall be reviewed and approved by the Board Engineer and the Zoning Officer;

- The inclusion of a note confirming that utilities at the site shall be placed underground;

- The inclusion of a note confirming that private fence will be included;

- The inclusion of a note confirming that occupants at the site are not permitted to place a garbage can / garbage / garbage debris on property owned by a third party;

- The inclusion of a note confirming that occupants at the site shall arrange for outgoing garbage to be taken to / placed at / wheeled to Lawrence Avenue (unless the Borough's Construction Office or Department of Public Works determine to the contrary);

- Confirmation that the home is to be accessed via the 10 ft. Easement from Lawrence Avenue;

- The inclusion of a note confirming that the ground floor shall not be utilized as living space.

d. The Applicants' Architect shall research the matter so as to confirm that a ground-level bathroom is (per prevailing Flood regulations) permitted on the first level of a home located in a Flood Zone. The Applicants' Architect shall advise the Board Engineer, Board Secretary, and Construction Officer as to the results of the said research within 90-days of the adoption of the within Resolution. To the extent the first level bathroom is not permitted under the Prevailing Regulations, then, in that event, the Applicants' Plans shall be revised accordingly.

e. The Applicants shall obtain approval from the Bayshore Regional Sewerage Authority prior to the issuance of any Permits for the subject project.

f. The Applicants shall comply with Prevailing FEMA Regulations – including the requirement of filing a Board-Attorney-approved Deed Restriction (non-conversion Agreement) confirming that the ground floor can contain no living space. The Applicants shall also provide the Board Secretary with proof that the said non-conversion Agreement has been recorded in the Office of the Monmouth County Clerk.

g. The subject home shall be flood-proofed, in accordance with Prevailing Requirements.

h. The Applicant shall perpetually replace and replant landscaping at the site.

i. The fire suppression details shall be specifically reviewed and approved by the Municipal Fire Official, Construction Office, and Board Engineer.

j. Unless otherwise authorized by the Keansburg Planning Board of Adjustment, there shall be no vehicular access to the site via the unimproved roadway / paper street, unless the Borough of Keansburg formally authorizes the same, or unless the Borough of Keansburg, or an Agent thereof (or other designated third-party Agent) improves the unimproved roadway / paper street. Furthermore, notice of the said restriction shall be binding on the within Applicants, as well as successor Owners / Operators / Transferees / Assigns. Moreover, notice of the within restriction, in a form reviewed / approved by the Board Attorney, shall be recorded in the office of the Monmouth County Clerk – and proof of same shall be submitted to the Board Secretary.

k. The Applicants shall maintain the Easement area (adjacent to the Applicants' portion of the property) (if allowed to do so under the Easement Requirements).

l. There shall be no adverse light spill-over onto any adjoining properties.

m. The Applicants shall be required to obtain any further relief, if any is necessary, concerning the potential notion that the new home does not abut a traditional public street.

n. The Applicants' revised Plans shall be reviewed and approved by the Borough's Fire Officials (relative to access, etc.).

o. The Applicants shall secure any and all necessary / appropriate outside approvals – and if any Plan details materially change as a result of the aforesaid outside approvals, the Applicants shall be required to seek further amended relief from the Keansburg Planning Board of Adjustment.

p. The gates of the pool shall comply with Prevailing Building / Municipal / Construction Code Regulations.

q. The subject property shall only be utilized as a single-family home.

r. Unless otherwise waived by the Board Engineer, the Applicants shall submit grading / drainage details to the Board Engineer for his review and approval.

s. The Applicants shall comply with all Prevailing Pool Clearance Building / Construction issues.

t. The Applicants shall comply with any Prevailing Fire Department / Fire Official Memoranda.

u. The Applicants shall provide the Borough's Building Department with the Flood Elevations.

v. The Applicants shall comply with all Prevailing ADA Regulations.

w. Per Prevailing FEMA / Flood Regulations, the ground level space shall not be utilized as habitable / living space.

x. The Applicants shall comply with all Prevailing FEMA / Flood Regulations.

y. The Applicants shall submit an Elevation Certificate to the Zoning Officer / Borough Engineer, so as to confirm that the newly constructed home complies with all Prevailing FEMA Regulations.

z. Any use of the ground-level shall comply with all prevailing Flood regulations.

aa. If any driveways, sidewalks, curbs, and/or aprons are damaged during the demolition / rebuilding process, the Applicants shall repair / replace the same, as necessary.

bb. The Applicants shall obtain all appropriate / necessary permits.

cc. The Applicants shall comply with all applicable Affordable Housing related Regulations / Ordinances / Contributions / Directives as may be imposed by the State, the Borough, C.O.A.H., the Court System, and / or any other Agent having jurisdiction over the matter.

dd. Unless otherwise waived, the Applicants shall comply with all terms and conditions of the review memoranda, if any, issued by the Board Engineer, Construction Office, the Department of Public Works, the Office of Fire Prevention and Investigation, and/or other agents of the Borough.

ee. The Applicants shall obtain any and all approvals (or Letters of No Interest) from applicable internal / outside agencies - including, but not

limited to, the United States of America (FEMA), the Department of Environmental Protection (CAFRA), the Monmouth County Planning Board, the Freehold Soil Conservation District, the local utility offices, the Department of Public Works, the local Fire Department, and any other agency having jurisdiction over the matter.

ff. The Applicants shall, in conjunction with appropriate Borough Ordinances, pay (or arrange for the satisfaction of) all appropriate/required fees, taxes, and inspection fees.

gg. If required by the Board Engineer, or as otherwise allowed by law, the Applicants shall submit appropriate performance guarantees in favor of the Borough of Keansburg.

hh. Unless otherwise agreed by the Zoning Board, the within approval shall be deemed abandoned, unless, within 24 months from adoption of the within Resolution, or any agreed upon extension, the Applicants obtain a Building Permit for the construction approved herein.

ii. **The approval granted herein is specifically dependent upon the accuracy and correctness of the testimony and information presented, and the accuracy of the Plans submitted and approved by the Board. The Applicants are advised that there can be no deviation from the Plans approved herein, except those conditions specifically set forth or otherwise referenced herein. In the event post-approval conditions at the site are different than what was presented to the Board, or different from what was otherwise known, or in the event post-approval conditions are not necessarily structurally sound, the Applicants and their representatives are not permitted to unilaterally deviate or build beyond the scope of the Board Approval. Thus, for instance, if the Board grants an application for an existing building / structure to remain, the same cannot be unilaterally demolished (without formal Borough / Board consent), regardless of the many fine construction reasons which may exist for doing so. That is, the bases for the Board's decision to grant Zoning relief may be impacted by the aforesaid change of conditions. As a result, Applicants and their representatives are not to assume that post-approval deviations can be effectuated. To the contrary, post-approval deviations can and will cause problems. Specifically, any post-approval unilateral action, inconsistent with the testimony / plans presented / approved, which does not have advanced Borough / Board approval, will compromise the Applicant's approval, will compromise the Applicant's building process, will create uncertainty, will create stress, will delay construction, will potentially void the Board Approval, and the same will result in the Applicant incurring additional legal / engineering / architectural costs. Applicants are encouraged to be mindful of the**

within – and the Borough of Sea Girt, and the Sea Girt Planning Board, are not responsible for any such unilateral actions which are not referenced in the testimony presented to the Board, and / or the Plans approved by the Board. Moreover, Applicants are to be mindful that the Applicants are ultimately responsible for the actions of the Applicants', their Agents, their representatives, their employees, their contractors, their engineers, their architects, their builders, their lawyers, and other 3rd parties.

BE IT FURTHER RESOLVED, that all representations made under oath by the Applicants and/or their agents shall be deemed conditions of the approval granted herein, and any misrepresentations or actions by the Applicants' representatives contrary to the representations made before the Board shall be deemed a violation of the within approval.

BE IT FURTHER RESOLVED, that the Application is granted only in conjunction with the conditions noted above - and but for the existence of the same, the within Application would not be approved.

BE IT FURTHER RESOLVED, that the granting of the within Application is expressly made subject to and dependent upon the Applicants' compliance with all other appropriate Rules, Regulations, and/or Ordinances of the Borough of Keansburg, County of Monmouth, and State of New Jersey.

BE IT FURTHER RESOLVED, that the action of the Board in approving the within Application shall not relieve the Applicants of responsibility for any damage caused by the subject project, nor does the Planning Board of Adjustment of the Borough of Keansburg, the Borough of Keansburg, or their agents/representatives accept any responsibility for the proposed development / construction.

FOR THE APPLICATION: Mr. Owen McKenna, Mr. Martin Flynn, Mr. John Donohue, Mr. Daniel Shields, Mr. Raymond Preston, Mr. Michael Mankowski, Mr. Dominick Grasso, Ms. Jennifer Perkel

AGAINST THE APPLICATION: NONE

ABSTENTIONS: NONE

The foregoing Resolution was offered by: Mr. Raymond Preston and Seconded by Mr. Dominick Grasso, and adopted by Roll Call Vote:

IN FAVOR: Mr. Martin Flynn, Mr. John Donohue, Mr. Dominick Grasso, Ms. Jennifer Perkel

OPPOSED: NONE

ABSTAINED: NONE

INELIGIBLE: NONE

ABSENT: Mr. Sean Tonne, Mr. Michael Donaldson, Mr. Owen McKenna, Mr. Daniel Shields, Mr. Michael Mankowski, Mr. Michael Flynn

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Keansburg Planning Board of Adjustment on this 14th day of August, 2023.

Desiree Hynes, Planning Board of Adjustment Secretary

KEK/dmp
Z:\KevinKennedyLaw\Municipal\Keansburg\Kuliy & Braylovsky (bulk - new single family garage pool)\Resolution.doc