

**MEMORIALIZING RESOLUTION OF THE
BOROUGH OF BAY HEAD PLANNING BOARD**

APPLICATION NO. 2023-07

WHEREAS, the Borough of Bay Head Planning Board is a duly constituted Planning Board pursuant to N.J.S.A. 40:55D-23 and the Borough of Bay Head Land Use Ordinance §147-18; and

WHEREAS, **BRUCE KENNEDY JR.** and **LAUREN KENNEDY**, Applicants, William T. Gage, Esq., appearing on their behalf, have applied to the Borough of Bay Head Planning Board to renovate an existing two-story single-family dwelling by adding additional habitable space, construction of a rear deck and installation of an inground swimming pool necessitating bulk variances for premises located at 193 Park Avenue, also known as Block 12, Lot 53, as designated on the Official Tax Map of the Borough of Bay Head; and

WHEREAS, the Applicants have provided proper notice to all property owners within 200 feet and all other pertinent parties; and

WHEREAS, the Applicants have submitted to the Board an Affidavit of Publication in proper form; and

WHEREAS, the Applicants are requesting to renovate an existing two-story residential dwelling by adding additional habitable space, a rear deck, and an inground swimming pool necessitating bulk variances as follows: lot width of 35 feet wherein 50 feet is required (pre-existing, non-conforming condition); lot frontage of 35 feet wherein

50 feet is required (pre-existing, non-conforming condition); front yard setback of 18.5 feet wherein 20 feet is required (14.2 feet pre-existing, non-conforming condition); side yard setback of 0 feet wherein 6 feet is required (pre-existing, non-conforming condition); combined side yard setback of 8.7 feet wherein 16 feet is required (8.9 square feet pre-existing, non-conforming); accessory structure side yard setback of 0.3 feet wherein 4 feet is required (pre-existing, non-conforming condition); air conditioning condenser units side yard setback of 3.7 feet wherein 4 feet is required (2.3 feet pre-existing, non-conforming); pool equipment side yard setback 3.4 feet wherein 4 feet is required; and

WHEREAS, the Planning Board has considered the Application and the documents filed by the Applicants and the Board having reviewed the Applicants' Application for Development, at the hearing held on October 18, 2023; and

WHEREAS, the Planning Board, after carefully considering all the evidence provided, has made the following findings of facts:

1. All those exhibits contained in the Board file and discussed during the hearing are hereby considered evidence for the purpose of this Application.
2. The property is located in the R-50 (Single-Family Residential) Zone District which permits single-family residential dwellings.
3. The Applicants are seeking to renovate the existing single family, two-story residential dwelling by adding additional habitable space, rear deck, and an inground swimming pool necessitating bulk variances for pre-existing, non-conforming conditions, as well as several new variances.
4. The Applicants are the owners of the subject property.

5. Bruce Kennedy was duly sworn and testified as follows:

A. Mr. Kennedy purchased the property with his wife on or about January 4, 2023 to be used as a secondary home.

B. The house is an “older home”, and the project is to regentrify the home to maintain the character of the house as a Bay Head house.

C. Mr. Kennedy came to Bay Head after SuperStorm Sandy and rented an apartment and both he and his wife decided to own a home in Bay Head. The Application for Development provides for a more attractive house to the neighborhood and is more functional.

D. The Kennedy’s have no desire to rent the house.

6. Jeffrey G. Schneider was duly sworn and testified as follows:

A. Mr. Schneider is a licensed architect and prepared the plans presented to the Board.

B. The existing house is in a “worn state” and needs to be expanded and modernized.

C. The house was raised after SuperStorm Sandy and currently meets the FEMA requirements for Base Flood Elevation.

D. The architectural plans provide for a three-bedroom house. The first-floor plan provides for a bedroom, walk-in closet and bathroom. The first floor maintains a laundry room, kitchen and living room.

E. The second floor provides for two bedrooms and one full bathroom. It also has a family room and roof deck.

F. The height of the house is below the maximum allowed pursuant to Bay Head's Ordinance.

G. The front stairway entrance is being removed and relocated to the east side of the house. This will provide for a 18.5 feet front yard setback where currently the front yard setback is 14.2 feet.

H. The project calls for a second-story addition which will have an 18.5 feet front yard setback.

I. The west side of the house currently encroaches approximately 0.4 feet onto the adjacent lot. The roof overhang on the first floor will encroach approximately 0.8 feet onto the adjacent lot. The second floor in that area is being eliminated to reduce the mass to the neighbor's property.

J. The Application for Development is for a shingle-style house in character with the houses in Bay Head.

K. The house will have double hung windows.

L. The house presently has 1,323 square feet of livable area and approximately 544 square feet of livable area will be added.

M. The air conditioning condenser units are located approximately 3.7 feet from the western side yard property line and are currently at 2.3 feet. The plans also show pool equipment to be approximately 3.4 feet from the western property line.

N. The combined side yard setback is presently 8.9 feet, and the Application for Development provides for an 8.7 combined yard setback. The reason for the increase by 0.2 feet or approximately 2-3 inches is to square off the eastern side of the house.

O. The house is "skewed" on the lot which necessitates both pre-existing and new variances.

P. The shed located on the property is not being renovated or relocated.

Q. The pool equipment does not have to be elevated.

R. The majority of the existing foundation will remain but will be altered and added to. Approximately 2/3 of the house will remain as part of the renovation.

S. The fence located on the western portion of the property line is encroaching onto the adjacent lot, and, if owned by the Applicants, will be removed and relocated.

7. During Mr. Schneider's testimony, several Board Members raised questions with regard to the location of the air conditioning condenser units and pool equipment as to whether it is necessary to have the equipment in the proposed location necessitating variances. The Applicants, through their attorney, Mr. Gage, represented that the pool equipment and air conditioning condenser units will be relocated, and the plans amended to demonstrate that no variances are being requested for the air conditioning units and pool equipment. Also, during the Board's observations of the Application for Development, a concern was raised with regard to the subject single-family residential dwelling encroaching onto the western adjacent lot. Representation was made by the

Applicants that there was an existing easement which provided for this encroachment. Further, Mr. Kennedy gave testimony that a new Easement has been executed between the Kennedys and the western adjacent lot property owner.

8. The meeting was open to the public for comment. Graham Wallis was duly sworn and testified that he is the adjacent property owner to the east of the subject property. He is concerned about privacy with regard to the number of windows on the eastern side of the proposed Application for Development. He testified that “smaller elevated windows” would be preferred.

9. The Board considered the testimony of all witnesses and exhibits and same are hereby incorporated as to their findings of fact.

WHEREAS, the Borough of Bay Head Planning Board has determined that the Applicants will suffer undue hardship if strict application of the Zoning Ordinance is applied; and

WHEREAS, the Borough of Bay Head Planning Board has determined that the purposes of the Municipal Land Use Law would be advanced by a deviation from the Zoning Requirements and the benefits of the deviation will substantially outweigh any detriment; and

WHEREAS, the Borough of Bay Head Planning Board has determined that the variances requested by the Applicants can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan, Master Plan and/or Land Use Ordinances of the Borough of Bay Head for the following reasons:

1. The Application for Development will not block the light, air or open space of any adjacent property.

2. The Application for Development will contribute to a desirable visual environment and provides for good civic design.

3. There is undue hardship burdened upon the Applicants because the house, which was constructed many years ago, has pre-existing, non-conforming conditions which entail practical difficulties to relocate the house to conform to all of the setback requirements of the Borough of Bay Head Land Use Ordinance.

4. The Application for Development to reconfigure the front entry stairs increases the current front yard setback from 14.2 feet to 18.5 feet reducing the existing encroachment and is aesthetically pleasing.

5. The Application for Development adds additional habitable space which provides for an additional bedroom and bathroom to an existing older Bay Head house which is a benefit to the community at large and maintains the aesthetics of the neighborhood.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Bay Head Planning Board on this 8th day of November, 2023, that the Application of the Applicants shall be granted, subject, to the following conditions:

1. A variance for lot width of 35 feet is granted.
2. A variance for a lot frontage of 35 feet is granted.
3. A variance for a front yard setback of approximately 18.5 feet is granted.

4. A variance for a side yard setback of 0 feet to the western property line is granted.

5. A variance for a combined side yard setback of approximately 8.7 feet is granted.

6. A variance for an accessory side yard shed structure of 0.3 feet is granted.

7. The master bathroom window shown on the western side of the first-floor plans shall be eliminated.

8. The first-floor deck as shown on the plan shall conform to the requirements as being pervious. The ground underneath the deck shall also be pervious.

9. The fence as shown on the western side of the subject property encroaches onto the adjacent lot. If the Applicants are the owners of the fence, the Applicants shall relocate the fence. Any reconstruction of the fence shall conform to the Borough of Bay Head Ordinances.

10. The existing single-family dwelling encroaches onto the western adjacent property by approximately 0.4 feet and the roof overhang on the first floor 0.8 feet. The Applicants shall submit documentation to the Zoning Officer of the Borough of Bay Head to confirm the adjacent property owner's acceptance of the encroachment prior to the issuance of any permits.

11. The fence located on the western portion of the property shall be reconstructed to provide gated access to the western side yard where the fence returns to the house.

12. The shed located on the subject property shall remain in its current location. If the Applicants seek to renovate the shed, the Applicants shall apply for the appropriate permits to the Zoning Officer.

13. The plans shall be amended to remove the pool equipment and the air conditioning condenser units from the western portion of the property which necessitates variances. The pool equipment and air conditioning condenser units shall be relocated on the property so as to conform to the Zoning requirements of the Borough of Bay Head. The plans shall be amended to show this relocation and shall be provided to the Board Engineer for review and approval prior to the issuance of any permits.

14. The Applicants shall substantially adhere to the plans submitted, as amended and discussed during the hearing. A substantial deviation from the approved plan shall require further review and approval by the Borough of Bay Head Planning Board. A *de minimus* change that the Construction Official and/or Zoning Official deems to be “cosmetic” in nature and does not increase an encroachment for which a variance was granted or changes the character of the structure, or violate a specific condition, may be approved by the appropriate Official.

15. The Applicants shall provide site performance bonds and inspection fees in accordance with the Borough of Bay Head Ordinances, or any other law or regulation as required.

16. The action of the Board constitutes a final approval for this Application for bulk variances and shall expire in accordance with the Municipal Land Use Law and is subject to the one-year time limitation set forth in Local Ordinance §147-30.

17. The approval is conditioned on the Applicants' payment of all real estate taxes due to date.

18. This approval is conditioned upon the Applicants' payment of any outstanding fees and escrows required by this Application.

19. The Applicants shall obtain any and all other approvals or waivers required by law from any other regulatory agency, including, but not limited to CAFRA or a Letter of No Interest, compliance with FEMA and local flood plan regulations, the Ocean County Planning Board, Ocean County Soil Conservation District, the Borough Sewer and Water Department, the New Jersey Department of Transportation and/or a Letter of No Interest, the local fire official, the Borough's beaches, storm water management, and flood damage prevention Ordinances.

20. No building permit shall be issued until documents are in full compliance with all conditions of this Resolution. The Applicants shall be obligated to submit all amended plans and/or other documentation to the Board Engineer for review within 180 days of the date of this Board Resolution. No permits shall be issued until the Board Engineer provides a letter to the Chairman and Members of the Borough of Bay Head Planning Board confirming compliance with any and all conditions of this Resolution of approval.

21. A signature block shall be added to the drawings for Chairman of the Planning Board, Board Secretary and Board Engineer to sign once the Confirming Compliance Letter is received. This block will be signed on the final approved drawings.

22. The Table in the Plot Plan drawing shall be revised to reflect the required side yard setback for the pool equipment to be 4 feet rather than 6 feet.

Moved by:

Seconded by:

ROLL CALL

Those in Favor:

Those Opposed:

Those Abstaining:

CERTIFICATION

I, DARREN ERBE, Clerk of the Bay Head Planning Board, hereby certify the above Resolution to be a true and correct copy of a Resolution adopted by the Bay Head Planning Board on November 8, 2023.

DARREN ERBE