

**MEMORIALIZING RESOLUTION OF THE
BOROUGH OF SEASIDE PARK PLANNING BOARD**

**Application No. PB 18-16
Kelly Ann Dixon, Applicant
34-36 D Street Block 46, Lot 9**

WHEREAS, the Borough of Seaside Park Planning Board is a duly constituted Planning Board pursuant to N.J.S.A. 40:55D-23 and 25c, and Borough of Seaside Park Development Ordinance §200-15; and

WHEREAS, KELLY ANN DIXON, applicant, Melanie Szuba Appleby, Esq. appearing, has applied to the Planning Board of the Borough of Seaside Park to construct

an exterior patio, kitchen and pergola in the yard area between two existing single family

dwelling on the lot necessitating bulk and special reasons variances for premises located

at 34-36 D Street, also known as block 46, lot 9 as designated on the official tax map of the Borough of Seaside Park; 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 bulk variances for rear yard setback of 5.13 feet (kitchen / pergola) whereas 20 feet is required, impervious lot coverage of 68.9% whereas 64.7% exists and 65% is allowed, and a special reasons variance to expand a non-conforming use; and

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WHEREAS, the Planning Board having considered the application and the documents filed by the applicants; having heard the testimony on behalf of the applicant and witnesses, and having examined the exhibits submitted, and having heard the testimony of all interested parties during its meeting of July 24, 2018; and

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

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. In addition to the exhibits noted above, the following exhibits were also specifically marked into evidence at the hearing:

A-1 Development Application

A-2 Tax Collector's Certification

A-3 Water & Sewer Certification

A-4 Tax Assessor's Certified List of Property owners

A-5 Affidavit of service

A-6 Affidavit of publication

A-7 Hearing notice.

A-8 Plot Plan and Pergola detail prepared by L2A Land Design, LLC dated April 23, 2018, last revised June 28, 2018, Sheets C-01, C-02, and C-03.

A-9 Poster board with 4 photos

A-10 21 page packet of color photos

A-11 Board Engineer review letter prepared by Douglas Rohmeyer, PE, CME, CFM of CME Associates dated July 9, 2018.

3. The property is located in the Residential Zone District which does not permit two family residential uses.

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4. The applicants are the owners of the subject property.
5. KELLY ANN DIXON, was duly sworn and testified as follows:
 - A. She purchased the property in August, 2016 which was known to her as “34-36 D Street” and contained 2 homes, a front and rear.
 - B. There is a rear structure/dwelling on the property known as #34, which contains a single car garage, and a one bedroom dwelling.
 - C. The property is serviced by two water accounts, one for each dwelling.
 - D. The Borough issued rental permits to her for the rear dwelling in 2016 and 2017. In addition, there is a rental permit sticker on the rear dwelling from a prior owner dated 2008.
 - E. The purpose of the application is to “beautify” the backyard with an outdoor recreation space including a paver patio, an outdoor kitchen consisting of a grill, sink and counter area with an overhang for seating, as well as a table and chair space covered by a pergola for shade.
 - F. She hired a landscape contractor to build out this space based on professional drawings she obtained from a L2A Land Design, LLC. Her contractor assured her all permits would be obtained. She hired the electric and plumbing subcontractors directly complete the trades necessary for the project. When her plumber and electrician applied for their permits, they advised her there were no zoning or building permits open for the job. She sought the advice of legal counsel immediately thereafter to guide her on these issues.
6. MICHAEL DIPPLE, P.E., was duly sworn and testified as follows:

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- A. He is a professional engineer of the state of New Jersey and New York with the firm L2A Land Design, LLC, and prepared the plans before the Board on this Application.
- B. The plan in evidence is the same plan obtained prior to construction and given to her landscaper for implementation.
- C. There are two structures on the lot, each containing one dwelling unit.
- D. The dark shaded areas on the plan are the improved areas, including the patio, kitchen, pergola, and gravel ground cover.
- E. All improvements noted on the plan have been constructed, except for the pergola.
- F. He testified all existing and proposed improvements meet the Borough height limitations and building coverage limitations, and that the impervious coverage violation is caused by 200 s.f. of the patio.
- G. He opined that the outdoor recreation space proposed by applicant is a common feature in the neighborhood, and it will improve the “outdoor experience” at the Site.
- H. He opined the proposal will improve the aesthetics of the site.
- 7. The meeting was opened to the public and thereafter closed as there were no members of the public that wished to be heard.

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9. The Board considered the testimony of the applicant and the witnesses and all the exhibits contained in the Board file and same are hereby incorporated as the findings of fact of the Planning Board.

WHEREAS, the Borough of Seaside Park Planning Board has determined that

a. special reasons exist to grant a departure from the development regulations; and;

b. the purposes of the Municipal Land Use Law will be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation substantially outweigh any detriment; and

c. the applicant will suffer undue hardship if the relief is not granted; and

d. the variances requested by the applicant can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinances of the Borough of Seaside Park for the following reasons:

1. The proposed development enhances the aesthetics of the site by creating a beautifully landscaped area.

2. The proposed development does not violate the light, air, or space of any adjacent property owners as the only setback violation is created by an open air pergola.

3. The proposed development is consistent with other residential structures and uses in the surrounding neighborhood, many of which have outdoor recreation spaces.

4. The legally existing two structures on the lot create practical difficulties when designing and constructing of a useful and conforming patio.

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5. The site is particularly suited for the existing two family use as it has existed on the lot for a long time with no apparent detrimental effect.

6. The expansion of the non-conforming use is de minimis in nature. There will be no new living space or building coverage, nor will the proposal increase the intensity of the use.

NOW, THEREFORE, be it resolved by the Borough of Seaside Park Planning Board on this 28th day of August, 2018, that the application of KELLY ANN DIXON for variances be and hereby is granted subject, however, to the following conditions:

1. A special reasons variance to expand a pre-existing non-conforming use shall be granted.

2. A bulk variance for rear yard setback of 5.13 feet (kitchen / pergola) whereas 20 feet is required, shall be granted.

3. A bulk variance for impervious lot coverage of 68.9% whereas 64.7% exists and 65% is allowed, shall be granted.

4. No variance is granted for building coverage, and the lot shall comply with the building coverage limitations in the development regulations.

5. All gravel covered areas shall be constructed with pervious material to permit rain water to percolate into the soils below.

6. The proposed pergola shall remain open-air in design (four posts, no walls, and open spaced framing members as a partial sun shade) as noted on the plans, The pergola shall not be further enclosed with sheathing, roofing, shingles, tarps, shades, shutters, windows, sashes, sills, walls, doors, or any other material or construction.

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7. The applicant shall strictly comply with the plans and surveys submitted and discussed, as amended, during the hearing. Any deviation from said plans shall be subject to further review and approval by the Planning Board.
8. The variances granted herein shall be exercised within two years as provided by Borough Code 200-16D.
9. The applicant shall obtain any and all other federal, state, county, local or CAFRA approvals as required by law.
10. The applicant shall provide performance bonds and inspection fees in accordance with the Seaside Park Borough Ordinances or any other law or regulation as required.
11. Proof of payment of real estate taxes to date, and all outstanding application or professional escrow fees. No zoning or building permit shall issue until proof of payment is submitted accordingly.

Moved by: Losey

Seconded by: Kroon

ROLL CALL

Those in Favor: ALL

Those Opposed: NONE

Those Abstaining: NONE

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CERTIFICATION

I, Sandra Martin, interim secretary of the Borough of Seaside Park Planning Board, hereby certify the above Resolution to be a true and correct copy of a Resolution adopted by the Borough of Seaside Park Planning Board on August 28, 2018.

SANDRA MARTIN