

BOROUGH OF SURF CITY LAND USE BOARD
813 Long Beach Blvd
September 26, 2018
7:00pm

The meeting was called to order, followed by a salute to the flag.

Roll call reflected the following members to be present: Peter Hartney, Gavin Hodgson, Sandra Klose, Alan Mannherz, John McMEnamin, Fred Peters, & James Russell. Absent: Paul Hoover, Emil TumSuden & David Wright.

Also, present: Board Engineer, Frank Little, Jr. and Board Attorney, Kevin Quinlan.

The Open Public Meeting Statement was read by Chairman Hartney, as follows: in compliance with the "Open Public Meetings Act" of the State of New Jersey, adequate notice of this meeting of the Borough of Surf City Land Use Board has been provided to three newspapers & published in the February 1, 2018 edition of the Beach Haven Times.

Chairman Hartney also read the following statement: this meeting is a judicial proceeding. Any questions or comments must be limited to issues that are relevant to what the Borough of Surf City Land Use Board may legally consider in reaching a decision. Decorum appropriate to a judicial hearing must be maintained all the time.

Mr. Russell moved to approve the August 22, 2018 special meeting minutes. Mrs. Klose seconded the motion. With a vote in the affirmative, the minutes were approved as presented.

Roll call vote reflected the following in favor: Mr. Hodgson, Mrs. Klose, Mr. Mannherz, Mr. McMEnamin, Mr. Peters, & Mr. Russell. Nays: none. Abstained: Mr. Hartney. Absent: Mr. Hoover, Mr. TumSuden & Mr. Wright.

Mrs. Klose moved to approve the August 22, 2018 regular meeting minutes. Mr. Mannherz seconded the motion. With a vote in the affirmative, the minutes were approved as presented.

Roll call vote reflected the following in favor: Mr. Hodgson, Mrs. Klose, Mr. Mannherz, Mr. McMEnamin, Mr. Peters, & Mr. Russell. Nays: none. Abstained: Mr. Hartney. Absent: Mr. Hoover, Mr. TumSuden & Mr. Wright.

Mr. Russell moved to approve Resolution 2018-22 for the release of various escrow funds. Mrs. Klose seconded the motion. With a vote in the affirmative, the following resolution was approved as presented.

WHEREAS, the Borough is in receipt of an escrow bond posted pertaining to inspection fees for a performance guarantee; and

WHEREAS, the Borough Engineer has completed the required inspections and certified that all improvements have been completed for the performance guarantee bond; and

WHEREAS, the Land Use Board Members have agreed with the recommendation that the professional invoices for the Pavese Group have been received and all professional fees have been satisfied for the docket listed below; and

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Surf City recommends that the following listed escrow bond be released to the corresponding applicant with the balance to be released to the Borough of Surf City.

<u>APPLICANT</u>	<u>DOCKET NUMBER</u>	<u>TYPE OF BOND</u>	<u>AMOUNT POSTED</u>	<u>AMOUNT TO BE RELEASED TO APPLICANT</u>	<u>AMOUNT TO BE RELEASED TO BOROUGH</u>
The Pavese Group	15-05	Inspection Fees	\$2,029.50	\$1,216.53	\$812.97

Roll call vote reflected the following in favor: Mr. Hartney, Mr. Hodgson, Mrs. Klose, Mr. Mannherz, Mr. McMenamin, Mr. Peters, & Mr. Russell. Nays: none. Abstained: none. Absent: Mr. Hoover, Mr. TumSuden & Mr. Wright.

Mr. Wright joined the meeting at 7:12 PM.

Mr. Russell moved that Ordinance 2018-14 was within the scope of the master plan. Ordinance 2018-14 will amend the definition of structure to exclude certain fire pits. Mr. McMenamin seconded the motion. There was discussion about fire pits and other regulations that may be required. Mr. Russell withdrew his motion to approve. Mr. Mannherz moved to table the matter for further review. Mr. Russell seconded the motion. With a vote in the affirmative, Resolution 2018-23 was approved.

WHEREAS, the Governing Body of the Borough of Surf City has requested the Land Use Board to review Ordinance 2018-14; and

WHEREAS, Ordinance 2018-14 will amend and supplement the Revised General Ordinances of the Borough of Surf City, County of Ocean, State of New Jersey, 2000 in Chapter 30 entitled zoning to amend the definition of structure to exclude certain fire pits; and

WHEREAS, the Land Use Board members have reviewed Ordinance 2018-14 at a public meeting on September 26, 2018; and

NOW, THEREFORE, BE IT RESOLVED that it is the finding of the Land Use Board of the Borough of Surf City that Ordinance 2018-14 be tabled until further review.

BE IT FURTHER RESOLVED, that the Board Attorney is directed to advise the Municipal Clerk of the findings.

Roll call vote reflected the following in favor: Mr. Hartney, Mr. Hodgson, Mrs. Klose, Mr. Mannherz, Mr. McMenemy, Mr. Peters, & Mr. Russell. Nays: none. Abstained: Mr. Wright. Absent: Mr. Hoover & Mr. TumSuden.

Howard & Ellen Rose appeared before the Board for setback relief for 2419 Ocean Avenue, Block 59 Lot 3. They were represented by attorney, Marc Policastro. The home was newly built with a setback of 2.2 feet from the street, where 10 feet is required. In addition, the side yard setback of 2.2 feet, where 5 feet is required. A variance would also be required to allow for the westerly side steps to encroach the utility easement. It was recommended by the Board Engineer, that the surveyor for the applicant address the fact that front steps encroached beyond the property line. Christine Nazzaro-Cofone, a New Jersey licensed Professional Planner, testified on behalf of the applicant.

Discussion ensued about setbacks.

Howard Rose was sworn in and testified that he became aware of the setback issue around the time the final building inspection was requested.

Mr. Russell moved to open the public hearing part of this application. Mrs. Klose seconded the motion. With a vote in the affirmative, the public hearing portion was opened.

Roll call vote reflected the following in favor: Mr. Hartney, Mr. Hodgson, Mrs. Klose, Mr. Mannherz, Mr. McMenemy, Mr. Peters, Mr. Russell & Mr. Wright. Nays: none. Abstained: none. Absent: Mr. Hoover & Mr. TumSuden.

Attorney Katharine Shackleton was present to speak on behalf of Allison & Scott Lange of 22 N. 25th Street. She submitted a proposed survey of work and a foundation location survey that was obtained through an OPRA request. She argued that a C-2 variance should not be granted for negligence. Ms. Shackleton cited the decision in the Deer-Glen Estates v. Borough of Fort Lee, 39 N.J. Super. 380, 386 (App. Div. 1956). Chairman Hartney asked if the Superior Court upheld the

decision in that case. Ms. Shackleton affirmed that the decision was upheld. Her clients are affected by light and air issues at this point. She also cited Kaufmann v. Planning Bd. for Warren, 110 N.J. 551, 563 (1988). Her positions rested on the fact that she did not consider this a de minimus mistake and a variance granted would not benefit the entire community.

Allison Lange, of 22 N. 25th Street, spoke to confirm what was represented on her behalf. She stated the house appeared to be both, crooked and to encroach setbacks, months ago. Mrs. Lange further explained why she felt that it was a product of negligence by the builder.

Sharon Danfield, of 26 N. 25th Street in Long Beach Township, spoke about her denial for a bigger deck to encroach the setback. In her experience, the responsibility of this mistake would be the builder to the home owner. Ms. Danfield felt an approval would set a precedent.

Margaret Girardo, 1001 D Long Beach Boulevard in Long Beach Township, thought this was an egregious mistake. She reasoned that if a variance was granted in this case, then anyone could request a variance for a building mistake.

Mr. Russell moved to close the public hearing part of this application. Mrs. Klose seconded the motion. With a vote in the affirmative, the public hearing portion was closed.

Mr. Policastro requested an adjournment for a further time to review the testimony given. Mr. Russell moved to deny the request. Mr. Hodgson seconded the motion. With a vote in the affirmative, the request was denied.

Roll call vote reflected the following in favor: Mr. Hartney, Mr. Hodgson, Mrs. Klose, Mr. Mannherz, Mr. McMenamin, Mr. Peters, Mr. Russell & Mr. Wright. Nays: none. Abstained: none. Absent: Mr. Hoover & Mr. TumSuden.

Counselor Quinlan reviewed the application citing the Kaufmann v. Planning Bd. for Warren, 110 N.J. 551, 563 (1988) case.

Mr. Hodgson moved to deny the requests for setback relief. Mr. Wright seconded the motion. With a vote in the affirmation, the application was denied.

Roll call vote reflected the following:

Mr. Hartney: In listening to the testimony provided by the applicant's Counsel and their expert on land use, along with public comment and in my review of the Borough Ordinances: the proposed setback was 10 feet and through mistakes being made it ended up at 2.2 feet. While the applicant's professional feels that there is benefit to the public, after considering it, the negative criteria have not been met. There has only been benefit to one person in this. There is no benefit to the Zoning Ordinances. In fact, it has a deleterious effect on the Zoning Ordinances. It opens the door to this Board being a place to come where people come to correct

mistakes on planned, permitted work. It undermines the credibility and effectiveness of the Construction Department and ultimately our Ordinances. There are bright lines, 10 feet is 10 feet, 6.8 feet is a mistake. I vote in favor of the Ordinance, to deny the application.

Mr. Hodgson: In going with Mr. Hartney, it violates the setbacks. We have setbacks for a reason. We are not in the business of deciding of who's right, wrong or who's mistake it was. Our job is to evaluate what's there. Given that and that it violates the setbacks, I vote no.

Mrs. Klose: I agree with everyone so far. I think it would be a negative impact on the Master Plan. I do not think it benefits the community. Based on the testimony from Ms. Shackleton and from some of the local residents, I am going to vote to deny.

Mr. Mannherz: I also vote to deny the application. The testimony provided that, there is no hardship to the property. Testimony also indicated that the original plan was to have a setback of 10 feet off the property, along N. 25th Street. Through a series of happenings, it is 2.2 feet at the deck. I think it is very much against the Master Plan. I think that granting this variance would be detrimental to the Borough Ordinances, the Master Plan and to the entire town.

Mr. McMenamini: Based on the same reasons that the Chairman and Mr. Mannherz made, I am going to vote to deny. I can't think of one positive of how this would advance the Master Plan or the town. I can only think of the negative.

Mr. Peters: The recourse in this case should be between the owner and the builder. It should not be before the Land Use Board, I vote to deny.

Mr. Russell: I vote to deny. All the information has been presented. The building is in the wrong location.

Mr. Wright: I vote to deny, this is detrimental to the Master Plan of the Borough of Surf City.

Nays: none. Abstained: none. Absent: Mr. Hoover & Mr. TumSuden.

Mike Tomko was present as one of the principal owners of 712 Long Beach Boulevard, LLC, d/b/a Wally's, located at Block 29, Lots 19 & 20. His request was for preliminary and final site plan approval with possible variances. Bob Kiss, attorney for the applicants, began by addressing the existing cooler. He submitted a plot plan to reflect the same. James Brzozowski, a NJ Licensed Professional Engineer and Planner, was sworn in to testify to the site. Craig Hill, a NJ Licensed Architect, was also sworn in to attest to the proposed plans.

After testimony and discussion, the applicant requested to adjourn the matter to explore solutions for onsite parking and lot coverage. A new site plan would be submitted for the next meeting. Mr. Russell moved to approve the request to adjourn the matter until the October 24,

2018 meeting. Mr. Wright seconded the motion. With a vote in the affirmative, the request was approved.

Roll call vote reflected the following in favor: Mr. Hartney, Mr. Hodgson, Mrs. Klose, Mr. Mannherz, Mr. McMenemy, Mr. Peters, Mr. Russell & Mr. Wright. Nays: none. Abstained: none. Absent: Mr. Hoover & Mr. TumSuden.

Mr. Russell moved to open the public hearing part of this application. Mr. Peters seconded the motion. With a vote in the affirmative, the public hearing portion was opened.

Carla Saams, one of the owners of 712 Long Beach Boulevard, LLC. She stated that the Surf City Hotel guests find their way to Wally's without using parking. Many of the employees are dropped off. They have never had people complain that they cannot come to eat because of lack of parking. Ms. Saams advised the Board that Wally's will revisit the plans to include for more parking. She also wanted to let the Board know that they went into this process with the best of intentions.

Mr. Russell moved to close the public hearing part of this application. Mrs. Klose seconded the motion. With a vote in the affirmative, the public hearing portion was closed.

Mr. Russell moved to open the public comment portion of the meeting. Mr. Mannherz seconded the motion. With a vote in the affirmative, public comment was opened. The public present did not come forward to comment. Mr. Wright moved to close public comment. Mr. Russell seconded the motion. With a vote in the affirmative, public comment was closed.

Mr. Russell moved to pay the bills. Mr. Wright seconded the motion. With a vote in the affirmative, the bills were approved to be paid.

Roll call vote reflected the following in favor: Mr. Hartney, Mr. Hodgson, Mrs. Klose, Mr. Mannherz, Mr. McMenemy, Mr. Peters, Mr. Russell & Mr. Wright. Nays: none. Abstained: none. Absent: Mr. Hoover & Mr. TumSuden.

Mrs. Klose moved to adjourn the meeting. Mr. Russell seconded the motion. With a vote in the affirmative, the meeting was adjourned.

Respectfully submitted,

Christine Hannemann, RMC/CMR

Deputy Clerk