

BOROUGH OF SURF CITY LAND USE BOARD  
813 Long Beach Blvd  
October 24, 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, Paul Hoover, Alan Mannherz, & James Russell. Absent: Sandra Klose, John McMenamain, Fred Peters, & Emil TumSuden.

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 September 26, 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. Hartney, Mr. Hodgson, Mr. Mannherz, Mr. Russell & Mr. Wright. Nays: none. Abstained: Mr. Hoover. Absent: Mrs. Klose, Mr. McMenamain, Mr. Peters, & Mr. TumSuden.

Mr. Wright moved to approved Resolution 2018-24 denying Howard & Ellen Rose of 2419 Ocean Avenue relief of setbacks. Mr. Russell seconded the motion. With a vote in the affirmative, the Resolution 2018-24 was approved.

Resolution of the Land Use Board of the Borough of Surf City, County of Ocean, State of New Jersey denying an application by Howard and Ellen Rose for variances for premises located at  
2419 N. 25<sup>th</sup> street block 59, lot 3

WHEREAS, Howard and Ellen Rose have applied for variances for block 59, lot 3; and

WHEREAS, the applicants are the record owners of the subject premises and have standing to make the application; and

WHEREAS, an application and supporting documents had been submitted to the Board and deemed complete by the Board Engineer and Attorney; and

WHEREAS, proof of service as required by law upon appropriate property owners and governmental bodies has been provided and determined to be in proper order; and

WHEREAS, required notice was published in the official newspaper of the Borough advising of the nature, time and date of the application and satisfactory proof of same provided; and

WHEREAS, a public hearing was held on September 26, 2018 at which time testimony and exhibits were presented on behalf of the applicants; and

WHEREAS, all interested parties were given the opportunity to be heard and several members of the public were sworn and spoke against the granting of the variances; and

WHEREAS, Kathleen Shackleton, Esq. representing an interested party submitted exhibits to the Board for its consideration. Those exhibits are identified as P-1 and P-2.

WHEREAS, the Surf City Land Use Board makes the following findings of fact:

1. The applicant's professional, Christine Nazzaro-Cofone, P.P. was qualified as an expert in planning and testified on behalf of the applicants.
2. The applicant, Howard Rose was sworn and testified in support of the application.
3. The applicant applied for and was granted zoning and building permits to construct a single-family home on the property. The plans as submitted were in conformity with the applicable ordinances of the Borough and no variances were required. Construction proceeded to substantial completion at which time it was determined that the building was not constructed in accordance with the approved plans. The as-built survey reveals that the structure requires variances for side yard setbacks where the side-yard setback requirement is 5' and 10'; and 2.20' and 8.85' are provided.
4. The applicants amended the application at the hearing to remove the step which encroaches into the easement thereby negating the need for a variance for this encroachment. The applicant testified that the encroachment would be removed and no relief for this item is being sought.
5. The following exhibits were identified and moved into evidence:

A-I Application

- A-2** Tax Map
- A-3 Easement
- A-4 Color Photos (7)
- A-5 Variance Plan prepared by Leon Tyszka, P.L.S. dated 8/13/18.
- P-1** Plot Plan of Survey prepared by Nelke/Tyszka Land Surveyors, LLC dated 5/19/17 and revised 11/6/17.
- P-2 Plot Plan of Survey prepared by Nelke/Tyszka Land Surveyors, LLC dated 5/19/17 and revised 11/6/17, 11/16/17 and 4/30/18.
- B-1 Board Engineer Review Letter dated 9/14/18.

6. The Board finds that the applicant failed to satisfy his burden of proof under N.J.S.A. 40:55D-70(c)(2) in that the applicant failed to offer credible testimony that the purpose of the Land Use Law would be advanced by deviation from the zoning ordinance requirement, that the variances could be granted without substantial detriment to the public good, that the benefits of granting the variances would substantially outweigh the detriment, nor that granting of the variances will not substantially impair the purpose and intent of the zone plan and/or Zoning Ordinances of the Borough of Surf City.
7. The Board specifically finds that the applicant failed to satisfy the positive and negative criteria.
8. The Board finds that there is no benefit to the public. The benefit ensures to only the applicant.
9. The Board further finds that the relief requested does not represent an opportunity for improved zoning and planning that will benefit the community.
10. The Board finds that the master plan and zone plan of the Borough of Surf City will not be advanced by the granting of the relief requested.
11. The Board Engineer's letter dated 9/14/18 was amended to clarify on Page 2, Paragraph b to correctly reflect the required side yards are 5 ft. and 10 ft. The Board has reviewed and adopts the engineering review letter of Owen Little and Associates dated 9/14/18 as amended. The comments therein, as amended, shall be incorporated herein as if set forth in length in this resolution.

NOW THEREFORE BE IT RESOLVED by the Land Use Board of the Borough of Surf City, County of Ocean, State of New Jersey, as follows:

1. The application for variance relief is hereby denied.
2. The applicant shall publish notice of this denial within 14 days from the date hereof.

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

Mike Tomko reappeared before the Board 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, reviewed the revisions on the site plan. James Brzozowski, a NJ Licensed Professional Engineer and Planner, testified to the site. Craig Hill, a NJ Licensed Architect, was also sworn in to attest to the proposed plans.

Mr. Kiss confirmed that the walk-in coolers have been moved out of the setbacks and that the improvement would conform to lot coverage. Mr. Tomko requested that the curb stops be placed three feet or so off the property line, so that the trees could be preserved. There was also discussion about hours of operation, lighting and HVAC placement.

Mr. Kiss contended that the applicants could count the parking in the spur on the Boulevard. Counselor Quinlan countered that the spur was not municipally owned. Brian Tomko, one of the applicants, argued that the definition for municipal was not clear. It was determined that a variance would be necessary for parking where five spaces are provided, forty-four spaces are required.

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

Counselor Quinlan reviewed that the Board would be considering a 1,168 +/- square foot addition that would allow for a fifty-seat open dining area. The restaurant has an existing seventy-seven seats. The property also has pre-existing non-conforming front and side yard setbacks.

Mr. Wright moved to approve the application. Mr. Mannherz seconded that motion. With a vote in the affirmative, the application was approved. Roll call vote reflected the following:

Mr. Hartney: In looking at this application, it is a difficult one to decide because the property is unique in and of itself. In reality, we will never get the forty-four spots in the Borough. They have made some improvements by adding the five parking spaces. In terms of the variance, it does not come close to the forty-four, but we'll never get to there. I realize that there are other opportunities to park at this business. And one of our objectives of the Master Plan is to promote business development in the Borough, I will affirm the motion.

Mr. Hodgson: I look at it a little differently but came to the same conclusion. You have two lots here and you're looking at expanding the building with seating. If this was a separate building on a separate lot, would you approve it with parking as it is? You're never going to get to forty-four spots. It qualifies under lot coverage and setbacks. So, it's just a parking issue, as far as I am concerned. I think that you did a good job at addressing it, in this instance. The three hundred feet with eighty-eight parking spots and the church parking agreement is a debacle. It does not qualify in this instance. I think the parking is satisfied and I vote in the affirmative.

Mr. Mannherz: I vote yes. The plan revised reflects that five parking spaces will be available on site. Thank you to the applicant, engineers, and architects for working that out. The rear yard non-conformity with the cooler will be removed. The proposed addition will also conform. So, there is not an expansion of that non-conformity. It is a nice improvement to the property. As Mr. Hartney mentioned the Master Plan does encourage us to encourage businesses when we can. This is one of those cases. You're trying to be a good neighbor with the proposed tree line and fencing. You have worked with the Board on the roof overhang. These are all positive things, I say yes.

Mr. Russell: This has been a very difficult application for us to decide on. We are up here to basically uphold the rules and the laws of the town. There are exceptions to the rules. I think, in this case, you went back and revised your plans with good concrete ideas. Along with the fact that you are good neighbor, I vote in favor.

Mr. Wright: I think you guys did a fantastic job presenting your case. I would like to make the same point as Mr. Hartney, that the Board is here to encourage business development in this community. This type of business exists all over the island. I think it is a hardship that we haven't allowed outside dining. This is probably the most difficult cases we have heard.

Nays: none. Abstained: Mr. Hoover. Absent: Mrs. Klose, Mr. McMenamin, Mr. Peters, & Mr. TumSuden.

Chairman Hartney wished Attorney Bob Kiss the best of luck in his retirement.

There was no public present to comment.

Mr. Russell moved to the bills. Mr. Wright seconded that 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, Mr. Hoover, Mr. Mannherz, Mr. Russell & Mr. Wright. Nays: none. Abstained: none. Absent: Mrs. Klose, Mr. McMenamain, Mr. Peters, & Mr. TumSuden.

Mr. Mannherz moved to adjourn the meeting. Mr. Wright seconded that motion. With a vote in the affirmative, the meeting was adjourned.

Respectfully submitted,

Christine Hannemann, RMC/CMR  
Deputy Clerk