

BOROUGH OF SURF CITY LAND USE BOARD
813 Long Beach Boulevard
November 28, 2018
7:00 pm

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

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

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

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

Vice Chairman Mannherz 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 October 24, 2018 regular meeting minutes. Mr. Wright seconded that motion. With a vote in the affirmative, the minutes were approved as presented.

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

Vice Chairman Mannherz noted that a NJDEP CAFRA permit had been received for Block 52, Lots 3 & 4. He mentioned anyone interested may view the file in the office of the Municipal Clerk.

Mr. Russell moved to approve Resolution 2018-26 for the release of various escrow funds. Mr. Wright seconded that motion. With a vote in the affirmative, the following resolution was approved as presented:

WHEREAS, the Borough is in receipt of escrow bonds posted pertaining to professional fees; and

WHEREAS, the Land Use Board Members have agreed with the recommendation that the professional invoices pertaining to the following listed applications have been received and all professional fees have been satisfied for the dockets listed below; and

NOW, THEREFORE, BE IT RESOLVED that the Land Use Board of the Borough of Surf City recommends that the following listed escrow bonds be released to the corresponding applicants with the balances 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 applicant</u>	<u>Amount to Borough</u>
Higgins, et al	18-08	Professional Bond	\$1,500	\$281.01	\$1,218.99
FHW Land Acquisition, LLC	18-09	Professional Bond	\$1,500	\$593.55	\$906.45
Raban & Raban, LLC	18-05	Professional Bond	\$1,500	\$243.61	\$1,256.39

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

Mr. Wright moved to memorialize Resolution 2018-25. Mr. Russell seconded that motion. With a vote in the affirmative, the following resolution was approved as presented:

Resolution 2018-25 of the Land Use Board of the Borough of Surf City, County of Ocean, State of New Jersey granting preliminary and final site plan approval and variances to 712 Long Beach, LLC for premises identified as Block 29, Lots 19 & 20.

WHEREAS, 712 Long Beach, LLC has made this application affecting premises identified as Block 29, Lots 19 & 20 on the official tax maps of the Borough of Surf City and has standing to make the application. The applicant proposes to construct a 1,168.83 SF +/- addition to the restaurant at the south side which would allow for a 50-seat open air covered dining area and

restrooms. A 5-foot x 18-foot kitchen addition and renovation to the existing kitchen area is also proposed.

WHEREAS, Michael Tomko has represented that he has been authorized to make the foregoing application and is authorized, on behalf of the property owners, 712 Long Beach, LLC.

WHEREAS, the applicant was represented by Robert J. Kiss, Esq.

WHEREAS, James Brzozowski was qualified as an expert in planning and engineering.

WHEREAS, the applicant has applied to the Borough of Surf City Land Use Board for the Preliminary and Final Site Plan Approval with the following variances:

1. Front yard setback of 5.9 feet, where 10 feet is required. **
2. Side yard setbacks of 4.9 feet/12 feet, where 5 feet/10 feet is required. **
3. Parking, where 44 spaces are required and 5 are provided.
4. Signs: two permitted not exceeding 40 sq. ft. and 3 signs not to exceed 60 sq. ft. is proposed.

** Pre-Existing non-conformity.

WHEREAS, the following exhibits were marked into evidence and admitted by the board;

- A1. Application.
- A2. Site Plan prepared by Horn, Tyson and Yoder, Inc. Dated 1/12/18 with revision dates of 8/13/18 and 8/31/18.
- A3. Architectural Plans prepared by Craig Hill, AIA dated 8/7/18 revised 9/11/18.
- A4. Tax Map.
- A5. Color Photos (4).
- A6. Resale Certificate of Occupancy w/ survey.
- A7. Site Plan prepared by Horn, Tyson and Yoder, Inc. Dated 1/12/18 with revision dates of 9/26/18.
- A8. Site Plan prepared by Horn, Tyson and Yoder, Inc. Dated 1/12/18 with revision dates of 8/13/18 and 8/31/18.
- A-9. Architectural Plans prepared by Craig Hill, AIA dated 8/7/18, 9/11/18 and 10/11/18.
- A-10. Color Photos (4).
- B1. Board Engineer letter dated September 14, 2018.
- B2. Board Engineer letter dated October 18, 2018.

WHEREAS, the site is in the Business Zone; however, due to the mixed use of the building the requirements of the RA Zone are applicable.

WHEREAS, the application was originally held on September 26, 2018 and was carried to October 24, 2018.

WHEREAS, all interested parties were given an opportunity to be heard.

NOW THEREFORE, be it resolved by the Land Use Board of the Borough of Surf City, County of Ocean, State of New Jersey, the Board makes the following findings of fact:

1. The applicant is authorized to represent the property owner and has standing to make the application.
2. The exhibits have been properly introduced and moved into evidence.
3. The application is deemed complete and jurisdiction lies within the Surf City Land Use Board.
4. The following amendments were made to the application:
 - a. The location of the free-standing coolers has been relocated and shall comply with the rear yard setback of 5 feet, thereby removing the need for a variance.
 - b. The overhanging eaves have been reduced to 18 inches, thereby removing them from lot coverage calculations.
 - c. The stairs to the upstairs apartment are relocated parallel to the northerly property line.
 - d. 5 on-site parking stalls shall be increase from 9 feet to 10 feet wide.
 - e. Curb stops shall be installed at each parking space located 3 feet from the property line to preserve existing buffer trees.
 - f. Three signs not exceeding 60 sq. feet cumulative to be installed. One interior lit roof top mounted sign, one interior lit wall mounted sign and one free standing externally lit sign.
5. The applicant's expert, James Brzozowski P.E. P.P. testified that the parking is adequate when taking into consideration on-site parking, existing on street parking and nearby public parking.
6. Mr. Brzozowski P.E. P.P. testified that the benefits of granting of the variances outweigh the detriments to the Master Plan and Borough Ordinances.
7. Michael Tomko was sworn and testified that there will not be more than 16 employees working on-site at one time. Mr. Tomko further testified that in his experience with the operations of the establishment, the available off-site parking on the street in front of the property and in the county owned parking areas are adequate to accommodate the increased parking requirements.

8. Mr. Tomko testified that the business' hours of operation from July to Labor Day will be 7 am to 10 pm on Friday through Saturday. All other times the hours of operation shall be 7 am to 9:30 pm. No amplified music will be allowed in the new addition. All rear facing doors will be closed at 9:00 pm every night and remain closed till the following day.
9. Craig Hill, AIA was sworn and qualified as an expert in architectural design.
10. Mr. Hill testified that all on-site lighting shall be shielded from washing on adjacent properties and roadways.
11. Mr. Hill further testified that the HVAC units will be located on the building or under the stairs and will not increase lot coverage.
12. The applicant has through testimony and exhibits provided sufficient proofs satisfying the positive and negative criteria for the granting of the relief requested.

NOW, THEREFORE, BE IT RESOLVED that the applicant is granted preliminary and final site plan approval with the following variances subject to the forgoing conditions and findings of fact.:

1. Front yard setback of 5.9 feet, where 10 feet is required. **
2. Side yard setbacks of 4.9 feet/12 feet, where 5 feet/10 feet is required. **
3. Parking where 44 spaces are required and 5 are provided.
4. Signs, where two not exceeding 40 sq. feet cumulative are permitted and 3 signs not to exceed 60 sq. feet cumulative are proposed.

** Pre-Existing non-conformity.

IT IS FURTHER RESOLVED that the comments and conditions set forth in the Board engineer's review letters dated September 14, 2018 and October 18, 2018 are incorporated herein.

IT IS FURTHER RESOLVED that the contents of the preamble are adopted and made part of this resolution.

IT IS FURTHER RESOLVED that this approval is expressly contingent upon the applicant complying with the following, if applicable:

1. Proof of payment of real estate property taxes;
2. Payment of any outstanding professional fees;
3. Obtain any and all local building permits and pay all associated fees;
4. Posting of any performance guarantees and inspection fees;
5. Ocean County Planning Board approval;
6. Compliance with flood zone regulations; and
7. Obtain any other outside agency approval as required.

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

Donald, Elizabeth & Cheryl Kennedy are the owners of 2415 Central Avenue at Block 93, Lot 3. They were present to request relief of lot coverage & other pre-existing non-conformities. Jim Raban, attorney for the applicant, reviewed the application for the Board. Leon Tyszka, land surveyor for the applicant, testified that the existing area, width & setback non-conformities would not be increased. He confirmed that the applicant would be seeking 39.3 percent lot coverage, where 35 percent is permitted. The property has an existing lot coverage of 37.5 percent.

Donald & Elizabeth Kennedy were sworn in to speak to the size of the elevator. There was discussion about the description of elevations on exhibit A-4. Mr. Raban clarified that page one of that drawing should be labeled as the front of the house, rather than rear of the house. The following amendments were established in relation to the elevations: page one is east, page two is north, page three is south & page four is west.

Mr. Russell moved to open this application to public comment. Mrs. Klose seconded the motion. With a vote in the affirmative, public comment was opened. The public present did not comment. Mr. Russell moved to close public comment. Mr. TumSuden seconded that motion. With a vote in the affirmative, the public comment portion of this application was closed.

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

Mr. Hodgson: It does not pose a substantial detriment to the town. As Mr. Quinlan said, we cannot take their specific case into consideration. Having said that, it does not go against the Master Plan as for open air and light. I vote to approve the application.

Mrs. Klose: I vote to approve, as well. I love that the elevator is going to be situated in the back of the house. I also like the idea that you're going to have an extra form of ingress/egress. There were no comments from the neighbors. I vote yes.

Mr. Mannherz: I also vote yes. I was a bit concerned about the size of the proposed addition, being six by twelve, where we usually see the six by six additions for elevators. Unfortunately, the builder was not here to further explain that. But the discussion about that topic, in regard to its location and possibly because of the piling location, I am okay with that. Also, echoing Mr. Hodgson, that it does not affect the open air and light. The surrounding properties are all one story raised ranches. There are a lot of wooded areas, as Mr. Raban has mentioned. So, I don't

think it is going to be an interference to any of the neighbors. As Mrs. Klose mentioned, it provides another form of ingress & egress. And Mr. Kennedy mentioned the safety of getting into their house of twenty-four years. So yes.

Mr. McMenamain: I also vote yes, for the same reasons, as stated. Also, it does not appear to be intrusive to the neighbors. They have all those pine trees in the back that kind of shield it from the other neighbors.

Mr. Peters: I concur with the other Board members. I also vote yes.

Mr. Russell: It is an advantage or disadvantage voting later in line, most of the reasons have been given. I was impressed by the fact that the neighbors did not have any objections. I can see no detriment either. I vote yes.

Mr. TumSuden: I also vote yes. It is going to provide an all-weather entrance to the property. The outside stairway, a couple houses in my neighborhood have them. One gentleman got snowed in and waited to get out of the house. I think that this would be a major improvement for them. I vote yes.

Mr. Wright: My mom lived with us and she had a set of those stairs. You almost need mountain climbing gear for the next four months. Best of luck with it and welcome to Surf City.

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

Counselor Quinlan was prepared to memorialize the application after a short recess. Mrs. Klose moved to approve the memorialization of Resolution 2018-27. Mr. TumSuden seconded the motion. With a vote in the affirmative, the following resolution was approved.

Resolution 2018-27 of the Land Use Board of the Borough of Surf City, County of Ocean, State of New Jersey granting variance approval to Donald S. Kennedy, Elizabeth S. Kennedy and Cheryl E. Kennedy for premises identified as Block 93, Lot 3.

WHEREAS, Donald S. Kennedy, Elizabeth S. Kennedy and Cheryl E. Kennedy are the owners of the premises identified as Block 93, Lot 3 on the official tax maps of the Borough of Surf City and have standing to make the application.

WHEREAS, the applicant was represented by James Raban, Esq.

WHEREAS, the applicant has applied to the Borough of Surf City Land Use Board for approval to construct a 6-foot x 12-foot elevator shaft to the rear of the existing dwelling and garage below the dwelling.

WHEREAS, the following variances are required;

1. Existing lot area of 4,000 sq. feet is provided, where 5,000 sq. feet is required. *
2. Existing lot width of 40 feet is provided, where 50 feet is required. *
3. Existing side yard setback (to stairs) is 5.7 feet, where 10 feet is required. *
4. Existing lot building coverage is 37.5%* and 39.3% is proposed, where 35% is permitted.

*denotes a pre-existing non-conformity.

WHEREAS, the site is located in the RA-Residential Zone.

WHEREAS, in support of the application, the following exhibits were offered and entered into evidence:

A-1 Application (3 Pages).

A-2 Color photos (4).

A-3 Variance Plan prepared by Nelke/Tyszka Land Surveyors, LLC dated 10/16/18.

A-4 Elevation drawings (hand drawn) - As amended A-5 Tax Map.

B-1 Board Engineer Letter dated 11/19/18.

WHEREAS, Donald S. Kennedy and Elizabeth Kennedy were sworn and testified they are the owners of the subject property and have the authority to bind all owners.

WHEREAS, the applicant's testified that the proposed addition of the elevator is necessary to provide safe and adequate ingress and egress to the property.

WHEREAS, Leon J. Tyszka, P.L.S. of Nelke Tyszka was sworn and qualified as an expert in surveying.

WHEREAS, Mr. Tyszka testified and offered the following opinions:

1. That the adjacent properties are fully developed and there is no opportunity to acquire additional property to bring the property more into conformity.
2. That the proposed structure would be consistent with the neighborhood scheme.
3. The proposed porch elevator shaft would not have a detrimental impact on open air and light given its location in the rear of the property.
4. The proposed lot coverage of 39.3% is only 72 sq. feet more than the existing lot coverage.
5. The pre-existing non-conformities are not being increased.

WHEREAS, the property is presently serviced by Borough water and sewer and is adequate.

WHEREAS, the hearing was opened to the public and all interested parties were given the opportunity to be heard.

NOW THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Surf City, County of Ocean, State of New Jersey, the Board makes the following findings of fact:

1. The applicant is authorized to make the application and has standing to make the application.
2. The application is deemed complete and jurisdiction lies within the Surf City Land Use Board.
3. Proof of service, as required by law, upon the appropriate property owners and governmental bodies has been provided and determined to be in proper order.
4. The Board takes notice that the adjacent properties are fully developed and there is no opportunity to acquire additional property to negate the need for variances.
5. Adequate off-street parking is provided under the structure in the proposed garage.
6. The Board finds that the negative criteria has been satisfied in that positive impact on the aesthetics, the neighborhood scheme, improvements of ingress and egress, safety and improvement of building stock outweigh any potential detriment to the public good, ordinances and master plan of the Borough.
7. The Board finds that the proposed increase in lot coverage, while in excess of that permitted, is de minimis.

NOW, THEREFORE, BE IT RESOLVED that the application for the following variances are hereby granted:

1. Lot area of 4,000 sq. feet, where 5,000 sq. feet is required. *
2. Proposed front yard of 40 feet, where 50 feet is required. *
3. Existing accessory side yard setback is 5.7 feet, where 10 feet is required. *
4. Lot coverage of 39.3%, where 35% is permitted and 37.5% is existing.

IT IS FURTHER RESOLVED that the contents of the preamble and board engineer review letter dated November 19, 2018 is adopted and made part of this resolution; and

IT IS FURTHER RESOLVED that this approval is expressly contingent upon the applicant complying with the following, if applicable:

1. Proof of payment of real estate property taxes;
2. Payment of any outstanding professional fees;
3. Obtain any and all local building permits and pay all associated fees;
4. Posting of any performance guarantees and inspection fees;
5. Obtain any outside agency approval as required;
6. Compliance with applicable flood zone regulations; and

7. Curbing as may be required by the building department under applicable ordinances.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the applicant, building department and Borough Clerk by the Board Clerk.

BE IT FURTHER RESOLVED that notification of this favorable resolution shall be published in an official newspaper of Surf City Borough by the Land Use Board Clerk within ten (10) days of its passage.

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

Eugene & Judith Brady of 2316 N. Central Avenue located at Block 55, Lot 4 were present to seek relief of lot area, coverage and setbacks. Robert Woodcock, engineer for the applicant, testified as an expert to the existing and proposed conditions. He described the corner lot as irregular & undersized with an area of 3,870 square feet, where 5,000 is required. The frontage on N. 24th Street has an existing setback of 7 feet, where 10 is required. The setback facing N. Central is proposed to be at 7.2 feet, where 10 is required. Existing lot coverage is proposed at 37.4 percent, where 35 is permitted. The non-conforming structure is currently in the process of being raised. The existing garage has been removed. The applicant proposed the construction of two separate decks on the western & eastern sides of the home.

Mr. Russell moved to open this application to public comment. Mrs. Klose seconded the motion. With a vote in the affirmative, public comment was opened. The public present did not comment. Mr. Russell moved to close public comment. Mr. TumSuden seconded that motion. With a vote in the affirmative, the public comment was closed.

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

Mr. Hodgson: What I want to stress is, this is a unique lot. It is sub-standard lot and there is no other lot like it in town. The reason why I stress that, is back when zoning was the wild west in the 50's, they were building cape cods with big garages at forty five percent lot coverage. This stands alone because it is such a unique lot and there is a general hardship. That being said, I think it conforms to the master plan of the town. The benefits outweigh the detriment. I am going to vote to approve the application.

Mrs. Klose: I am going to vote to approve as well. I understand that this is a pre-existing non-conformity. After reviewing what is existing and proposed, I feel like you're keeping within the footprint.

Mr. Mannherz: As I have expressed, this is a blank slate and should be in conformance with thirty five percent lot coverage. I vote yes, for the applicant, for reasons that were stated in regard to the size, location and orientation of the lot. What was pre-existing, as far as the lot coverage. And the applicant has tried to stay within that in a difficult situation for that property. Someone had mentioned that the decks as proposed would not impact any neighbors. I appreciate the applicant trying to work with us in regard to the east setback. But as pointed out by our engineer, it is pretty de minimis in affecting the lot coverage. I vote yes.

Mr. McMenemy: For the reasons stated, I vote yes.

Mr. Peters: I concur with the Board members, we should pass this variance.

Mr. Russell: I vote yes, for the reasons stated.

Mr. TumSuden: I'll vote yes, also. The plans are staying within the foot print and square footage of what was there.

Mr. Wright: I vote yes, for reasons stated.

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

Counselor Quinlan was prepared to memorialize the application after a short recess. Mrs. Klose moved to approve the memorialization of Resolution 2018-28. Mr. Russell seconded the motion. With a vote in the affirmative, the following resolution was approved.

Resolution 2018-28 of the Land Use Board of the Borough of Surf City, County of Ocean, State of New Jersey granting variance approval to Eugene and Judith Brady for premises identified as Block 55, Lot 4.

WHEREAS, Eugene and Judith Brady are the owners of the premises identified as Block 55, Lot 4 on the official tax maps of the Borough of Surf City and have standing to make the application.

WHEREAS, the applicants were not represented.

WHEREAS, the applicants have applied to the Borough of Surf City Land Use Board for approval to construct two separate decks to an existing structure which is in the process of being raised. The applicants have demolished the existing one car garage.

WHEREAS, the following variances are required;

1. Existing lot area of 3,870 sq. feet is provided, where 5,000 sq. feet is required. *
2. Proposed front yard setback to the deck on Central Avenue is 7.2 feet, where 10 feet is required.
3. Existing front yard setback on North Twenty Forth Street is 7 feet, where 10 feet is required. *
4. Proposed building coverage is 37.4%*, where 35% is permitted.

*denotes a pre-existing non-conformity.

WHEREAS, the site is located in the RA-Residential Zone.

WHEREAS, in support of the application, the following exhibits were offered and entered into evidence:

A-1 Application (3 Pages).

A-2 Plot/Grading Plan prepared by JCR Engineering LLC dated 4/12/18 and revised 9/12/18 and 10/12/18.

A-3 Architectural Plans prepared by the Applicant.

A-4 Color Photos (4).

A-5 Tax Map.

B-1 Board Engineer Letter dated 11/19/18.

The foregoing exhibits being marked and admitted into evidence.

WHEREAS, Eugene Brady was sworn and testified that he is the co-owner of the subject property along with his wife. He testified he has the authority to testify on behalf of and to bind all owners. He also testified that the adjacent properties are fully developed and no land is available to acquire.

WHEREAS, the applicant further testified that the proposed improvements provide for enhancements in the ingress and egress from the premises. The applicant also testified that with the removal of the existing detached garage the impact upon the open air and light has been reduced.

WHEREAS, the applicant further testified that while the proposed decks could be reduced to bring the lot coverage more into conformity, the utility and cost of reducing the decks outweigh the resulting minimal reduction in lot coverage.

WHEREAS, Robert A. Woodcock, P.E., P.P. of JCR Engineering, LLC was sworn and qualified as an expert in planning and engineering.

WHEREAS, Mr. Woodcock testified and offered the following opinions:

1. That the adjacent properties are fully developed and there is no opportunity to acquire additional property to bring the property more into conformity.
2. The variances can be granted without substantial detriment to the zone plan, ordinances and master plan of the Borough.
3. The applicant is proposing maintaining the existing lot coverage of 37.4%, however, the impact upon open air and light has been reduced with the removal of the detached garage.
4. The proposed improvements are an aesthetic improvement and consistent with other properties in the neighborhood.
5. While the proposed decks could be reduced in size it would render them of limited use and require costly modifications to the existing structure.

WHEREAS, the property is presently serviced by Borough water and sewer and is adequate.

WHEREAS, there is adequate off-street parking provided.

WHEREAS, the hearing was opened to the public and all interested parties were given the opportunity to be heard.

NOW THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Surf City, County of Ocean, State of New Jersey, the Board makes the following findings of fact:

1. The applicant is authorized to make the application and has standing to make the application.
2. The application is deemed complete and jurisdiction lies within the Surf City Land Use Board.
3. Proof of service, as required by law, upon the appropriate property owners and governmental bodies has been provided and determined to be in proper order.
4. The board takes notice that the adjacent properties are fully developed and there is no opportunity to acquire additional property to negate the need for variances.
5. Adequate off-street parking is provided.
6. The witnesses offered credible testimony that the negative criteria have been satisfied in that the positive impact on the aesthetics, the neighborhood scheme, improvement in open air and light, improvements of ingress, egress, and improvement of building stock outweigh any potential detriment to the public good, zone plan, ordinances and master plan.
7. The pre-existing non-conformities are not being increased by the proposed improvements.

NOW, THEREFORE, BE IT RESOLVED that the application for the following variances are hereby granted:

1. Existing lot area of 3,870 sq. feet is provided, where 5,000 sq. ft. is required. *
2. Proposed front yard setback to the deck on Central Avenue is 7.2 feet, where 10 feet is required.
3. Existing front yard setback on North Twenty Forth Street is 7 feet, where 10 feet is required. *
4. Proposed building coverage of 37.4%*, where 35% is permitted.

*denotes a pre-existing non-conformity.

IT IS FURTHER RESOLVED that the contents of the preamble and board engineer review letter dated November 19, 2018 is adopted and made part of this resolution; and

IT IS FURTHER RESOLVED that this Approval is expressly contingent upon the applicant complying with the following, if applicable:

1. Proof of payment of real estate property taxes;
2. Payment of any outstanding professional fees;
3. Obtain any and all local building permits and pay all associated fees;
4. Posting of any performance guarantees and inspection fees; and
5. Obtain any outside agency approval as required.
6. Compliance with applicable flood zone regulations; and
7. Curbing, as may be required by the building department, under applicable ordinances.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the applicant, building department and Borough Clerk by the Board Clerk.

BE IT FURTHER RESOLVED that notification of this favorable resolution shall be published in an official newspaper of Surf City Borough by the Land Use Board Clerk within ten (10) days of its passage.

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

Daniel Malay, co-owner of How You Brewin, located at 8 North Long Beach Boulevard appeared before the Board to seek preliminary & final site plan approval. Mr. Malay was represented by his attorney, Robert Munoz; NJ Architect, Matthew Davis; and Landscape Architect, Charles Morris.

The applicant will be expanding his current use as a coffee business to the south side unit of the building. It was determined that no variances or relief would be required.

Mr. Russell moved to open this application to public comment. Mr. Wright seconded the motion. With a vote in the affirmative, public comment was opened.

Enzo Pavese, of 3 N. Long Beach Boulevard, mentioned the site plan was incorrectly cited on the engineer report. He also stated he did not see the site plan in the file last week during his inspection. Mr. Pavese also said that parking lot was paved this last year by permit of the Zoning Officer. He claimed that site work was completed without a site plan. There was discussion about the number, size and striping of parking spaces.

Mr. Russell moved to close public comment. Mr. Wright seconded that motion. With a vote in the affirmative, the public comment portion of this application was closed.

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

Mr. Hodgson: This is straightforward, with no variances. It was well done, great presentation. It conforms to the master plan and will be good for the town. I vote to approve.

Mrs. Klose: I vote to approve as well. Because there are no variances requested and the cosmetic changes are just gorgeous. I vote yes.

Mr. Mannherz: I also vote yes to approve. I appreciate Mr. Malay's work behind the scenes. I am glad to hear that it is thriving. Mr. Davis, with your nice rendition. As it was mentioned, no variances are required. It is an improvement. It shows that business is growing and prosperous in Surf City.

Mr. McMenamin: I vote yes, for the reasons already stated. But I would like to congratulate the architect, great job.

Mr. Peters: This site plan conforms to the Surf City Master Plan, I vote yes.

Mr. Russell: How could you possibly vote no for something as nice as that? The rendering and the presentation were beautiful. Counselor, you did a very nice job.

Mr. TumSuden: I vote yes, for reasons stated.

Mr. Wright: I vote yes also. This is a compliment to the staff there. Job well done. I think this is a fantastic improvement to the business community of Surf City.

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

Counselor Quinlan was prepared to memorialize the application after a short recess. Mr. Russell moved to approve the memorialization of Resolution 2018-29. Mr. Wright seconded the motion. With a vote in the affirmative, the following resolution was approved:

Resolution 2018-29 of the Land Use Board of the Borough of Surf City, County of Ocean, State of New Jersey granting a preliminary and final major site plan to Daniel Malay c/o How You Brewin Coffee for premises located at Block 11, Lots 23 & 24.

WHEREAS, Daniel and Lori Malay are the leasees of the premises identified as Block 11, Lots 23 & 24 on the official tax maps of the Borough of Surf City and have standing to make the application with the consent of the property owner.

WHEREAS, 8 NSC, LLC is the owner of the property in question and has consented to the application and executed the application and affidavit of ownership.

WHEREAS, the applicant was represented by Robert Munoz, Esq.

WHEREAS, the applicant's architect, Matt Davis of AIA of Smith and Davis, was qualified as an expert and testified as an expert in architecture.

WHEREAS, Mr. Davis testified that the foot print is not being expanded by the proposed improvements. Changes are cosmetic and not an expansion of the structure.

WHEREAS, Mr. Davis further testified that all exterior lighting will be shielded so as not to shine on adjacent properties or roadways.

WHEREAS, the applicant's landscape architect, Charles Morris of the Bay Avenue Plant Company, was sworn and testified.

WHEREAS, the applicant, Daniel Malay was sworn and testified regarding the proposed use, number of employees, available parking, and proposed signage.

WHEREAS, the applicant has applied to the Borough of Surf City Land Use Board for preliminary and final major site plan approval to convert the existing 1500 sq. feet retail space of "How to Live" to accommodate an interior expansion of the neighboring "How You Brewin" which will result in 3000 sq. feet of restaurant space including 49 seats and 6 employees, in addition to other onsite improvements.

WHEREAS, the property was the subject of an approved change of use variance by Resolution 2007-06. It was agreed that all terms and conditions of that resolution are not modified herein and remain in full force and effect.

WHEREAS, the site is located in the Business Zone and the proposed use is a permitted use in the zone and no bulk variances are being sought.

WHEREAS, the applicant is not proposing any modifications to the footprint of the structure. There are proposed site improvements including the addition of a paver patio and proposed fire pit. A handicap access ramp will also be provided.

WHEREAS, the Land Use Review Board considered this application at a public hearing on November 28, 2018. The following Exhibits were marked into evidence as follows:

- A-1 Application (3 pages including check list).
- A-2 Plot Plan prepared by Land Line Surveyors dated 10/3/18.
- A-3 Site Plan prepared by Smith and Davis Architects, LLC dated 10/25/18.
- A-4 Architectural Plans (Interior Tenant fit-out) prepared by Smith and Davis Architects, LLC dated 9/21/18 consisting of two pages.
- A-5 Architectural Plans (Exterior) prepared by Smith and Davis Architects, LLC dated 9/21/18 consisting of one page. A-6 Land Use Board Resolution 2007-06.
- A-7 Color Photos (5).
- A-8 Elevation Renderings prepared by Smith and Davis Architects, (2).
- B-1 Board Engineer Review letter prepared by Frank Little of Owen Little and Associates, Inc. dated November 19, 2018 - as amended.

WHEREAS, the applicant testified that the proposed use would not be more intense than the existing use.

WHEREAS, the applicant further testified that all activity would be in compliance with applicable noise ordinances.

WHEREAS, the applicant has indicated that no more than a total of six employees will be working at one time in the coffee establishment.

WHEREAS, the site-plan shows outside seating, which the applicant testified, will be used by customers waiting to be seated inside and that no table service will take place. The Board takes no position regarding the permissibility of outside seating should the same be permitted by the Borough in the future.

WHEREAS, the applicant has testified that the hours of operation shall be from May to September, 7 a.m. to 11 p.m. and from October to April, 7 a.m. to 6 p.m.

WHEREAS, the applicant has testified that deliveries shall not be by articulated vehicle and shall be during normal business hours as set forth herein.

WHEREAS, all interested parties were given the opportunity to be heard.

NOW THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Surf City, County of Ocean, State of New Jersey, the Board makes the following findings of fact:

1. The applicants are the leasees of the property which is the subject of this application and have standing to make the application.
2. The property owner is named and made a party to the application.
3. The application is deemed complete and jurisdiction lies within the Surf City Land Use Board.
4. Proof of service, as required by law, upon the appropriate property owners and governmental bodies has been provided and determined to be in proper order.
5. The Board considered and determined that the application is properly heard as a preliminary and final major site plan. The Board further waives the design standards applicable to site plans.
6. The Board finds that the proposed use is no more intense than the existing approved use.
7. The Board notes that currently fire pits are not an approved use. The Board approves the location only of the proposed fire pit. Should the Borough subsequently approve installation of fire pits said fire pit shall comply with all requirements imposed by ordinance.
8. All lighting shall be shielded so as not to shine on adjacent properties or roads.
9. The hours of operation shall be May through September 7 a.m. to 11 p.m. and October through April 7 a.m. to 6 p.m.
10. The site plan shall be amended to reflect striping of the portion of the lot to the northwest to identify that portion of the lot as no-parking.
11. All deliveries shall be during normal business hours in non-articulated vehicles.

NOW, THEREFORE, BE IT RESOLVED that the application for preliminary and final major site plan approval by Daniel Malay is hereby granted, subject to the forgoing conditions and findings of fact.

IT IS FURTHER RESOLVED that the contents of the preamble are adopted and made part of this resolution; and

IT IS FURTHER RESOLVED that this approval is expressly contingent upon the applicant complying with the following, if applicable:

1. Proof of payment of real estate property taxes;
2. Payment of any outstanding professional fees;
2. Obtain any and all local building permits and pay all associated fees;

3. Posting of any performance guarantees and inspection fees, and
4. Obtain any outside agency approval as required.

The applicant shall publish notice of this decision in the official newspaper of the Borough of Surf City within 14 days of the date hereof and provide a copy to the Board Secretary.

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

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

Mr. TumSuden moved to adjourn the meeting. Mr. Peters seconded the motion. With a vote in the affirmative, the meeting was adjourned.

Respectfully submitted,

Christine Hannemann, RMC/CMR

Land Use Board Clerk