

BOROUGH OF SURF CITY LAND USE BOARD
813 Long Beach Boulevard
October 23, 2019
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: Peter Hartney, Gavin Hodgson, Paul Hoover, Alan Mannherz, James Russell, Emil TumSuden & David Wright. Absent: Sandra Klose, John McMenamin & Fred Peters.

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 Board of Surf City Land Use Board has been provided to three newspapers & published in the January 31, 2019 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. TumSuden moved to approve the September 25, 2019 regular meeting minutes. Mr. Russell seconded that motion. With a vote in the affirmative, the minutes were approved as presented.

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

Mr. Mannherz moved to approve the memorialization of a denial for Resolution 2019-15. Mr. Russell seconded that motion. With a vote in the affirmative, the following resolution was memorialized.

RESOLUTION OF THE LAND USE BOARD OF THE BOROUGH OF SURF CITY, COUNTY OF OCEAN,
STATE OF NEW JERSEY DENYING AN APPLICATION BY ANDREW AND STACEY JORDAN FOR
BULK VARIANCES FOR PREMISES LOCATED AT 1417 N. OCEAN TERRACE BLOCK 41, LOT 4.

WHEREAS, Andrew and Stacey Jordan have applied for bulk variances for Block 41, Lot 4;
and

WHEREAS, the applicant 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 25, 2019 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

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

1. The applicant was represented by Stuart Snyder, Esquire.
2. Stacey Jordan testified that she is the owner of the subject property with her husband.
3. Mrs. Jordan testified that they are seeking to demolish the existing duplex structure and construct a single-family home.
4. The applicant's professional, Leon Tyszka P.L.S. was qualified as an expert in surveying and testified on behalf of the application.
5. Mr. Tyszka testified that the only variance required is for lot coverage where 35 percent is permitted, and 37.58 percent is proposed.
6. Mr. Tyszka further testified that proposed improvements comply with CAFRA regulations.
7. The applicant's architect, Craig Brearley, AIA was qualified as an expert in architectural design and testified on behalf of the applicants.
8. Mr. Brearley testified that the building plans would be revised to recess the fireplace so as to not violate the permitted twenty-one (21) inch encroachment into the side yard and thereby remove the requirement for the side yard setback variance.
9. Mr. Brearley further testified that the room located on the ground floor identified as a "Bunk Room" would be re-designated as an office/sitting area.
10. Mr. Brearley further testified that the roof top knee wall would be redesigned as an open railing and the structure would comply with the height requirements of the ordinance and no variance is requested.
11. Mr. Brearley offered his opinion that the variance could be granted without detrimental impact to the zoning ordinances and master plan. Mr. Brearley further

opined that the benefits of improvements in aesthetics and reduction or elimination of existing non-conformities outweigh any detriment.

12. The hearing was opened to the public wherein a member of the public was sworn and offered testimony in opposition to the variance request. The witness cited detriment to the open air and light caused by the lot coverage being greater than permitted.
13. The following exhibits were identified and moved into evidence:
 - A-1 Application.
 - A-3 Variance Plan prepared by Nelke/Tyszka dated 8/9/18.
 - A-4 Architectural Plans prepared by Craig W. Brearley; AIA dated 9/9/19.
 - A-5 Color Photos (4).
 - B-1 Board Engineer Review Letter dated 9/16/19.
14. 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.
15. The Board finds that the proposed improvements are entirely new, and the testimony was proffered as to why the structure could not be constructed without the need for the variance was not compelling and the detriments outweigh the benefits.
16. The Board finds that the proposed lot coverage would be detrimental and would negatively impact open air, and light of the surrounding properties. This being a fundamental purpose of the lot coverage requirements. The Board finds this to be a specific and substantial detriment to the public good which is not outweighed by the benefits opined by the applicants' experts.
17. The Board has reviewed and adopts the engineering reports of Owen Little and Associates dated September 16, 2019 which comments therein 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 vote reflected the following in favor: Mr. Hartney, Mr. Hodgson, Mr. Mannherz, Mr. Russell, Mr. TumSuden & Mr. Wright. Nays: none. Abstain: Mr. Hoover. Absent: Mrs. Klose, Mr. McMenamin & Mr. Peters.

Mr. Russell moved to approve the memorialization of approval for Resolution 2019-16. Mr. TumSuden seconded that motion. With a vote in the affirmative, the following resolution was memorialized.

RESOLUTION OF THE LAND USE BOARD OF THE BOROUGH OF SURF CITY, COUNTY OF OCEAN, STATE OF NEW JERSEY GRANTING AMENDED PRELIMINARY AND FINAL SITE PLAN APPROVAL TO PANZONE'S SURF CITY, LLC FOR PREMISES IDENTIFIED AS LOT 14, BLOCK 48.

WHEREAS, Panzone's Surf City, LLC has made this application affecting premises identified as Block 48, Lot 14 on the official tax maps of the Borough of Surf City and has standing to make the application.

WHEREAS, Joyce Panzone has represented that she has been authorized to make the foregoing application and is authorized, on behalf of the property owner, Panzone's Surf City, LLC.

WHEREAS, the applicant was represented by James S. Raban, 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 Preliminary and Final Site Plan approval; and

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

- A1. The application.
- A2. Site Plan prepared by Horn, Tyson and Yoder, Inc. Dated 3/21/19 and revised dated 4/23/19.
- A3. Floor Plan prepared by Horn, Tyson and Yoder; Inc. dated 3/21/19.
- A4. Color Photos (4).
- A5. Exhibit A with hand drawn location of refrigeration units.
- B1. Board Engineer letter dated May 15, 2018.

WHEREAS, the site is located in the Business Zone.

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

WHEREAS, the property consists of a restaurant on the ground floor and a single residential apartment on the second floor. The restaurant contains 24 seats.

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 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 pre-existing non-conformities exist on the property:
 - a) Lot Area of 3,240 square feet is proposed, where 5,000 square feet is permitted.
 - b) Lot Coverage of 42.8 percent is proposed, where 35 percent is permitted.
 - c) Fourteen parking spaces are required, whereas six non-conforming spaces are proposed.
 - d) An encroachment of 0.2 feet over the property line to the south.
5. The applicant's request for a site plan waiver is granted by the Board. This is an existing structure for which no changes to the exterior or interior of the structure, setbacks, parking or use is proposed.
6. The applicant's expert, James Brzozowski, P.E. P.P. testified that the foregoing non-conformities are pre-existing and not exacerbated by the present application.
7. The applicant's expert further testified that there are no proposed changes to the use or intensity of that use. The applicant is seeking to memorialize the conditions which exist on the site.
8. Joyce Panzone was sworn and testified that she is one of the owners and operator of the business and has owned and operated the business since its acquisition in 1984. She further testified that Site Plan Approval is necessary to avail the applicant of the outdoor seating permitted under the Borough Ordinances. No changes are proposed, the applicant simply seeks to memorize the conditions as they have existed for 30 plus years.

9. The applicant offered testimony as to the location of the outside refrigeration units. A notation was made on the Site Plan (A-2) and marked as Exhibit A-5. The applicant further testified that the existing electrical service for the refrigeration units was properly permitted.
10. The Board further finds that the pre-existing 0.2 feet encroachment of the staircase over the property line and onto the adjacent property to the south of the building is a pre-existing condition. However, that Board makes not findings as to this condition nor does the Board grant a variance for this condition but simply recognizes its existence. Nothing in this resolution shall be construed as an approval by the Land Use Board as to the existence of this non-conformity.

NOW, THEREFORE, BE IT RESOLVED, that the applicant is granted Preliminary and Final Site-Plan approval subject to the forgoing conditions and findings of fact.

IT IS FURTHER RESOLVED that the comments and conditions set forth in the Board Engineer's Review Letter dated September 16, 2019 is incorporated herein.

IT IS FURTHER RESOLVED that the contents of the preamble is 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.

Notice of this decision shall be published 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. Hartney, Mr. Hodgson, Mr. Mannherz, Mr. Russell, Mr. TumSuden & Mr. Wright. Nays: none. Abstain: Mr. Hoover. Absent: Mrs. Klose, Mr. McMenamin & Mr. Peters.

Mr. Russell moved to approve Resolution 2019-17. Mr. Wright seconded that motion. With a vote in the affirmative, the following resolution was approved.

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:4-6, is the law of the State of New Jersey providing for adequate public notice to be given for meetings of the Land Use Board of the Borough of Surf City; and

NOW, THEREFORE, BE IT RESOLVED, by the Land Use Board of the Borough of Surf that the Municipal Clerk be authorized and directed to proceed with providing adequate notice for a special meeting to be held on December 4, 2019 at 7:00 pm; and

BE IT FURTHER RESOLVED, by the Land Use Board of the Borough of Surf City that the Municipal Clerk be authorized and directed to proceed with providing adequate notice of the reorganization meeting and the first regular meeting of the year to be held on January 22, 2020 at 7:00 P.M.

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

Chairman Hartney noted that there was no public present to comment.

Mr. Russell moved to approve the payment of the bills. Mr. TumSuden seconded that motion. With a vote in the affirmative, the bills were approved to be paid.

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

Mr. Russell 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/QPA
Borough Clerk/Administrator