

BOROUGH OF SURF CITY LAND USE BOARD  
813 Long Beach Boulevard  
April 22, 2020  
4:00 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, Paul Hoover, Sandra Klose, Alan Mannherz, John McMenamin Mr. Russell & Emil TumSuden. Absent: Gavin Hodgson, Fred Peters, & David Wright.

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, posted on the Borough website & published in April 9, 2020 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 February 26, 2020 regular meeting minutes. Mrs. Klose 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. Hoover, Mrs. Klose, Mr. Mannherz, Mr. Russell, & Mr. TumSuden. Nays: none. Abstentions: Mr. McMenamin. Absent: Mr. Hodgson, Mr. Peters & Mr. Wright.

A letter was received from Rich Visotcky, Esq. requesting to carry an application for Sibco Holdings, LLC & Sibco Management, LLC of 31 N. 16<sup>th</sup> Street to the May 2020 meeting. This is an application for a minor subdivision with existing non-conformities. Mr. Russell moved to approve the request. Mr. TumSuden seconded the motion. With a vote in the affirmative, the request was approved.

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

An email was received from Rich Visotcky, Esq. requesting to carry an application for John & Catherine Lawlor of 1615 N. Ocean Avenue to the June 2020 meeting. This is an application for front area & setback relief for ornamental steps. Mr. Russell moved to approve the request. Mrs. Klose seconded the motion. With a vote in the affirmative, the request was approved.

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

A letter was received from Stu Snyder, Esq. requesting to carry an application for Romano & Associates, LLC of 1515 Sunset Avenue to the May or June 2020 meeting. This is an application for relief of setbacks and lot coverage. Mr. TumSuden moved to approve the request. Mrs. Klose seconded the motion. With a vote in the affirmative, the request was approved.

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

Mr. Mannherz moved to approve Resolution 2020-07 reviewing Zoning Ordinance 2020-03. Mr. Russell seconded the motion. With a vote in the affirmative, the following was approved.

WHEREAS, the Governing Body of the Borough of Surf City has requested the Land Use Board to review Ordinance 2020-03; and

WHEREAS, Ordinance 2020-03 will amend the Revised General Ordinances of the Borough of Surf City, County of Ocean, State of New Jersey, 2000 in Chapter 30 as it pertains to “Zoning” specifically, Section 30-11.5(C)4 Outdoor Recreational Fires & Devices, Section 30-6.4(b) & Section 30-7.4(b) Building Area & Dimensions, and Section 30-5.2(A) Business Zone- Uses & Regulations.; and

WHEREAS, the Land Use Board members have reviewed Ordinance 2020-03 at a public meeting on April 22, 2020; and

NOW, THEREFORE, BE IT RESOLVED that it is the finding of the Land Use Board of the Borough of Surf City that Ordinance 2020-03 is consistent with the intent and purpose of the procedures of the Land Use Board.

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

Mr. Russell moved to approve Resolution 2020-08 reviewing Zoning Ordinance 2020-04. Mr. TumSuden seconded the motion. With a vote in the affirmative, the following was approved.

WHEREAS, the Governing Body of the Borough of Surf City has requested the Land Use Board to review Ordinance 2020-04; and

WHEREAS, Ordinance 2020-04, vacating all right, title and interest of the Borough of Surf City in a twenty (20’) foot alley lying between Lots 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 18, 20 & 21, Block 53, which alley is located between 21<sup>st</sup> Street and 22<sup>nd</sup> Street and designated as Lot 22 Block 53 on the tax records of the Borough of Surf City; and

WHEREAS, the Land Use Board members have reviewed Ordinance 2020-04 at a public meeting on April 22, 2020; and

NOW, THEREFORE, BE IT RESOLVED that it is the finding of the Land Use Board of the Borough of Surf City that Ordinance 2020-04 is consistent with the intent and purpose of the procedures of the Land Use Board.

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

Mr. Russell moved to approve Resolution 2020-09 memorializing approval for Bette Kish of 233 N. 6<sup>th</sup> Street for lot area, frontage and setbacks. Mrs. Klose seconded the motion. With a vote in the affirmative, the following was approved.

RESOLUTION OF THE LAND USE BOARD OF THE BOROUGH OF SURF CITY, COUNTY OF OCEAN, STATE OF NEW JERSEY GRANTING VARIANCE APPROVAL TO BETTE C. KISH FOR PREMISES IDENTIFIED AS LOT 15, BLOCK 69.

WHEREAS, Bette C. Kish is the owner of the premises identified as Block 69, Lot 15, 233 N. 6<sup>th</sup> Street on the official tax maps of the Borough of Surf City and has standing to make the application.

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

WHEREAS, the applicant has applied to the Borough of Surf City Land Use Board for approval to construct a two (2) story dwelling with a one (1) car garage on the ground level.

WHEREAS, the following variances are required.

1. Lot area of 3,000 square feet, where 5,000 square feet is required. \*
2. Lot Width/Frontage of 30 feet, where 50 feet is required\*
3. Side yard setback of 5 feet, where 10 feet is required.

\*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.
- A-2 Color photos (4).
- A-3 Variance Plan prepared by Nelke/Tyszka dated March 15, 2019 revised 1/7/20
- A-4 Architectural drawings prepared by Pagnotta Architectural Construction dated 12/3/19 consisting of 2 pages.
- A-5 Zoning Map
- A-6 3D Rendering

B-1 Board Engineer Letter dated 1/13/20.

\*The foregoing exhibits being marked and admitted into evidence.

WHEREAS, Leon J. Tyszka, P.E. of Nelke/Tyszka Land Surveyors, LLC was sworn and qualified as an expert in planning.

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 preexisting non-conformities of lot area and lot width are not being expanded.
4. The centering of the dwelling on the lot with side yard setbacks of 5 feet on each side improves the aesthetics and open air and light.
5. The plan will be revised to remove the reference to “combined side-yard setbacks”.
6. The plan will be revised to locate the depressed curb which shall comply with the applicable ordinance(s).
7. The plan will be revised to correctly identify the location and size of the entrance stairs and landing to conform to the architectural drawings.

WHEREAS, Michael Pagnotta, AIA of Pagnotta Architectural Construction was sworn and qualified as an expert in architecture.

WHEREAS, Mr. Pagnotta testified that the aesthetics of the proposed structure will be significantly in keeping with other structures in the neighborhood and an improvement over the previous structure.

WHEREAS, Mr. Pagnotta testified that adequate off-street parking will be provided in the driveway and garage.

WHEREAS, Mr. Pagnotta testified that the air condition units will be located on the roof and will not be located inside or rear setbacks.

WHEREAS, Mr. Pagnotta testified that the improvements will comply with the required 35% lot coverage and no variance is being sought.

WHEREAS, Mr. Pagnotta testified that in his expert opinion the variances can be granted without substantial detriment to the master plan and zoning ordinances. He further testified that the benefits of granting the variances outweigh any detriment.

WHEREAS, the property is presently serviced by borough water and sewer. The plan shall be revised to identify the location of same.

WHEREAS, the hearing was opened to the public and all interested parties were given the opportunity to be heard and several individuals spoke against and in favor of the application.

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 the variances.
5. The witnesses offered credible testimony that the negative criteria have been satisfied in that positive impact on the aesthetics, the neighborhood scheme, upgrading of building construction outweigh any potential detriment to the public good, ordinances and master plan.

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

1. Lot area of 3,000 square feet where 5,000 square feet is required.
2. Lot Width/Frontage of 30 feet where 50 feet is required.
3. Side yard setbacks of 5 ft where 10 ft is required.

IT IS FURTHER RESOLVED that curbing shall be provided along the frontage of the lot with a depressed curb for the driveway in compliance with applicable ordinance(s).

IT IS FURTHER RESOLVED that a revised plan shall be submitted with the following revisions:

1. Remove of reference to “combined side yard setback”.
2. Correctly identify the location and size of entrance stairs and landing.
3. Location of depressed curb.
4. Location of water and sewer utilities.
5. Notion that air conditioning units to be located on roof.

IT IS FURTHER RESOLVED that the contents of the preamble and board engineer review letter dated January 15, 2020 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. Hartney, Mr. Hoover, Mrs. Klose, Mr. Mannherz, Mr. Russell, & Mr. TumSuden. Nays: none. Abstentions: Mr. McMenamin. Absent: Mr. Hodgson, Mr. Peters & Mr. Wright.

Mrs. Klose moved to approve Resolution 2020-10 memorializing approval for Dan Malay, owner of How You Brewin, located at 8 N. Long Beach Boulevard for a parking variance. Mr. Mannherz seconded the motion. With a vote in the affirmative, the following was approved.

RESOLUTION 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 APPROVAL W/ VARIANCE TO DANIEL MALAY AND HOW YOU BREWIN INC. FOR PREMISES LOCATED AT LOTS 23 & 24, BLOCK 11.

WHEREAS, the applicant has applied to the Borough of Surf City Land Use Board for Preliminary and Final Major Site Plan Approval with variance for parking where 22 spaces are required and 16 are provided. The applicant is proposing increasing the number of permitted employees from 6 to 9 and an increase of seats from 49 to 65 resulting in a required additional 6 parking spaces which are not provided.

WHEREAS, the applicant is not proposing any changes in the structure other than the addition of seats in the existing public area service area.

WHEREAS, the property was the subject of an approved Change of Use Variance by Resolution 2007-06. And a Preliminary and Final Site Plan Approval by Resolution 2018-29. It was agreed that all terms and conditions of those resolutions not modified herein 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 a variance for parking is being requested.

WHEREAS, the applicant seeks waiver of full site plan requirements given that the site is already developed and no changes to the use and/or improvements are proposed.

WHEREAS, Daniel Malay and How You Brewin Inc. 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 Stuart Snyder, Esq.

WHEREAS, the applicant's Planner, James Brzozowski, P.P. of Horn Tyson and Yoder was qualified as an expert and testified as an expert in planning.

WHEREAS, Mr. Brzozowski testified that the footprint is not being expanded by the proposed increase in seating and employees. Changes are limited to the interior of the structure and not an expansion of the structure itself. There will be no expansion of the public portion of the interior of the building.

WHEREAS, Mr. Brzozowski testified that the granting of the variance can be granted without substantial detriment to the zone plan and master plan of the Borough.

WHEREAS, Mr. Brzozowski testified that the benefits of granting the variance outweigh any detriment.

WHEREAS, the applicant's Architect, Matthew Davis, AIA of Smith and Davis Architects, LLC was qualified as an expert in architecture and was sworn and testified.

WHEREAS, Mr. Davis testified that in his opinion the granting of the variance can be granted without substantial detriment to the zoning ordinances and master plan of the Borough. Mr. Davis further testified that the benefits of granting the variance outweigh any detriment.

WHEREAS, Mr. Davis opined that the additional seating and employees would not increase the intensification of use.

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

WHEREAS, Mr. Malay testified that the business is a self-serve and take-out food establishment which does not provide table service. The applicant agrees that the establishment will remain a self-serve and take food service establishment and no table service will be offered.

WHEREAS, Mr. Malay testified that his experience running the business for the past year that the additional seating and employees will not result in the intensification of use. Mr. Malay opined that the additional staff would actually facilitate quicker visit times during busier time periods in that patrons would receive their order quicker due to reduced wait times.

WHEREAS, the Land Use Board considered this application at a public hearing on February 26, 2020. The following Exhibits were marked into evidence as follows:

- A-1 Application
- A-2 Site Plan prepared by Smith and Davis Architects dated 10/25/18 revised 9/23/19.
- A-3 Elevations and Perspectives prepared by Smith and Davis Architects; LLC dated 6/25/18 revised 9/23/19.
- A-4 Architectural Plans (Interior Tenant fit-out) prepared by Smith and Davis Architects, LLC dated 9/21/18 revised 9/23/19.
- A-5 Color Photos (7)
- A-6 Land Use Board Resolution 2007-06.
- A-7 Land Use Board Resolution 2018-29.
- B-1 Board Engineer Review letter prepared by Frank Little of Owen Little and Associates, Inc. dated 1/13/20

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 with variance. The Board further waives the design standards applicable to site plans.
6. The Board finds that the proposed increase in employee and seating is no more intense than the existing approved use.
7. The Board finds that the variance can be granted without substantial detriment to the zone plan and master plan of the Borough. That the benefits of granting the variance outweigh the detriment, if any.
8. The Board takes not position as to the installation of a railing along the front porch/elevated patio or the proposed water feature. These are construction code



and zoning permitting issues and the Board defers to the construction and zoning officials and applicable construction code requirements.

NOW, THEREFORE, BE IT RESOLVED that the application for Preliminary and Final Major Site Plan Approval and variance for parking by Daniel Malay and How You Brewin Inc. is hereby granted subject to the forgoing conditions and findings of fact.

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

IT IS FURTHER RESOLVED that the prior approvals identified in Resolution 2007-06 and Resolution 2018-29 remain in full force and effect to the extent not amended by this approval and are incorporated herein as if set forth herein in their entirety.

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.

The clerk 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. Hoover, Mrs. Klose, Mr. Mannherz, Mr. McMenamain, Mr. Russell, & Mr. TumSuden. Nays: none. Abstentions: Mr. Hartney. Absent: Mr. Hodgson, Mr. Peters & Mr. Wright.

Chairman Hartney called for any comments from the public. There were no comments.

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

Respectfully submitted,



Christine Hannemann, RMC/CMR/QPA

Borough Clerk/Administrator